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*A Survey of Sources of Honey Hunting Law in Poland Prior to 1795**

Abstract

The laws and regulations concerning honey hunters in Poland prior to 1795 were of two kinds, customary and statutory. They regulated the relations between honey hunters and their superiors as well as between honey hunters themselves. These legal norms not only provided protection of the honey hunters' rights and possessions, but also regulated various aspects of their vocational activities. This article attempts to compile and to produce a comprehensive survey of the sources (*fontes iuris oriundi*) of the Polish honey hunting law. For that purpose, a distinction needs to be made between honey hunting law *sensu largo* and *sensu stricto*. The former category encompasses all of the laws concerning honey hunters, whereas the latter refers to regulatory laws of honey hunters' communities. The earliest legal rules concerning honey harvesting are of medieval origin. For instance, customary norms concerning bee theft and the ownership of bee swarms can be found in *Księga Elbląska* (The Book of Elbląg, the oldest extant code of Polish customary law, dating back to the 13th–14th century) and in the 14th-century Statutes of Casimir the Great (which, among others, sets a penalty for destroying trees with beehives). The presence of such provisions indicates the prevalence of honey harvesting in medieval Poland. Indeed, the more important the role honey hunting played in the economy of a region, the more numerous and more detailed the regulations connected with that activity were (e.g. Masovia and the Grand Duchy of Lithuania). Honey hunting law *sensu largo* was made by monarchs, the Sejm, local assemblies (*sejmiks*) as well as by individual landlords. As the economic importance of honey harvesting declined in the early modern age, it was rarely the object of general legislation. The occupation, it seems, needed no further regulation beyond local laws (*sensu stricto*), i.e. honey hunting laws of local communities in royal, ecclesiastical or noblemen's domains. These communities observed their old customary laws (some of which was written down in the course of time) as well as the rules laid down by their landlords or, occasionally, by the community itself. The honey hunting law was part of domanial law, and distinct from rural law. This distinction is reflected in the separate status of the honey hunters who were not members of the village community (*gromada*), even though they were, like other villeins (peasants), the bondsmen of the lord of the manor. Honey hunting law was a foundation of their self-governance.

* Polish text: *Systematyka źródeł prawa bartnego przedrozbiorowej Rzeczypospolitej*, "Cracow Studies of Constitutional and Legal History" 2017, vol. 10, issue 3, pp. 419–466; DOI 10.4467/20844131KS.17.014.7558. Author's ORCID: 0000-0002-2400-073X.

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Take nothing of a honey hunter's.
Hey! don't rob folks in Kurpie.
Just take a pot for charcoal,
And you'll pay for it dearly.

Hanging up on a tree,
Don't be tempted by the lines,
Because soon it's there
the honey hunter to the bees he climbs!

You'll be eating humble pie,
If he catches you, my brother,
And that home again indeed
disrobed you'll go no wonder.

So if you find you like
Janek's bees and hives,
then flee so quick and sure
from Satan's tempting wiles.

Not enough that the laughingstock
of your neighbours you will be,
But still after the trial,
They'll hang you from a tree.

Soon the crows will smell
The fresh corpse that is hanging.
Yea, my brother, in Kurpie
You keep away from thieving.[1]

1. Introduction

"This entire country is full of honey, that which the bees make in the forest without any effort, not only in forest hives, but wherever they find any kind of hollow, even in holes in the ground" – so wrote Antonio Maria Gratiani, secretary to the papal legate Giovanni Francesco Commendone, about Poland in the second half of the 16th century.[2] Indeed, in the medieval period, honey hunting was a popular activity in Polish lands. This was also reflected in legal norms, which used to be referred to as "honey hunting law", without any greater reflection regarding its character or its place in the system of the sources of law in Poland prior to 1795. This work aims to fill this gap in the research.

1.1. Aims of this work

The notion of "honey hunting law" is used in the literature for legal norms of various origins and contents. Although honey hunting law or various legal aspects of honey hunting have been studied several times before (see below), no scholar has focused on what is likely the most important question, namely the sources of this law. This is a fundamental issue, because ascribing norms as belonging to the collection of "honey hunting law" as well as describing their character in the context of the system of sources of law in pre-1795 Poland makes proper analysis of individual institutions possible. The main aim of

[1] A. Chleboradzki [pseud.] (Wiktor Czajewski), *Na kurpiowskim szlaku. Powieść historyczna z XVII w.*, vol. 2, Warszawa 1900, pp. 114–115 ("Gazeta Polska", vol. 13, in the complete collection vol. 78). The above fragment is a song from Kurpie sung during the honey harvest described in the novel.

[2] A.M. Gratiani, *Pamiętnik Commendoniego* [in:] *Cudzoziemcy o Polsce. Relacje i opinie*, ed. J. Gintel, vol. 1: *wiek X–XVII*, Kraków 1971, p. 151.

this work is to present a classification of the sources of honey hunting law, including a conceptual framework enabling proper analysis of these norms. It was not my goal, however, to create an "inventory" of the sources of honey hunting law. I did endeavour to consider enough of them to provide the proposed classification with a solid basis in primary source material. In particular, I did not undertake a study of honey hunters' books of records, as this would have significantly increased the scope of what is already a quite broad work. The application of law in practice by honey hunters' courts still remains a very important and current research question.

In a subsequent section of this introduction, after an outline of the state of current research on honey hunting law, a definition of honey hunting law is presented. Next, a distinction was made between all norms (honey hunting law *sensu largo*), and parts of them which constituted the law of particular honey hunting communities (honey hunting law *sensu stricto*). The main section of this work is dedicated to the *fontes iuris oriundi*[3]. Taken into consideration here were both customary law as well as statutory law. The discussion is then crowned with general conclusions.[4]

1.2. Current state of research

One of the first to study honey hunting law was Joachim Lelewel. In his work *Pszczoły i bartnictwo w Polszcze*[5] [Bees and Beekeeping in Poland] he provided an overview of the sources of honey hunting law. In 1928, Jerzy Rundstein undertook an attempt to systematically outline the sources of honey hunting law. The assembled *fontes iuris mellificatorum* he divided into 1) collections of laws (codifications, digests); 2) books of records (entries); and 3) secondary sources (academic literature).[6] This classification thus applied solely to those sources which could be described as *fontes iuris cognoscendi*, for certainly books of records (and to an even greater extent narrative sources, not to even mention literature) did not constitute *fontes iuris oriundi*.

Legal historians have devoted relatively little attention to honey hunting law. Among the most important, one might mention works by (in chronological order)

[3] In parentheses, I have used the basic inflectional forms of Latin nouns and verbs (nominative case and infinitive, respectively).

[4] A separate work is dedicated to identification of the sources of honey hunting law.

[5] J. Lelewel, *Pszczoły i bartnictwo w Polszcze* [in:] *idem*, *Polska, dzieje i rzeczy Jej*, vol. 4, Poznań 1856, pp. 507–533.

[6] J. Rundstein, Źródła prawa bartnego, "Pszczelnictwo Polskie" 1928, no. 8, pp. 233–236. See also other works by this author in the pages of "Pszczelnictwa Polskie" and "Bartnik Postępowy": *idem*, *Strony w procesie bartnym*, "Pszczelnictwo Polskie" 1927, no. 7, pp. 208–209; *idem*, *Z dziejów bartnictwa XVI wieku*, "Pszczelnictwo Polskie" 1927, no. 8, pp. 236–238; *idem*, *Postępek sądowy w sądach bartnych*, "Pszczelnictwo Polskie" 1928, no. 9, pp. 265–266; idem, *Pozew w kodyfikacjach prawa bartnego XVI i XVII wieku na Mazowszu*", "Bartnik Postępowy" 1928, no. 9, pp. 292–293; *idem*, *Ogólny przebieg procesu bartnego według kodyfikacji Niszczyckiego (1559) i Skrodzkiego (1616)*, "Bartnik Postępowy" 1928, no. 10, pp. 330–331; *idem*, *Koszty sądowe i kary w prawie bartnem na Mazowszu w XVI i XVII wieku*, "Bartnik Postępowy" 1928, no. 12, pp. 395–396; *idem*, *Cztery księgi bartne nowogrodzkie z XVII-go i XVIII-go wieku*, "Pszczelnictwo Polskie" 1927, nos. 9, 10, 11, 12, pp. 263–269, 293–299, 324–331, 356–361; 1928, no. 1, pp. 4–7.

Alojzy Winiarz,[7] Przemysław Dąbkowski,[8] Józef Rafacz,[9] Ewa Ferenc-Szydełko,[10] as well as other authors whose articles have mainly been germ of further research in the field.[11] Honey hunting law has also found its place in synthetic histories of Polish law.[12] The legal aspects of the honey economy have been touched upon in works by, among others, (chronologically) Ludwik Krzywicki,[13] Zygmunt Gloger,[14] Aleksander Jabłonowski,[15] Adam Chętnik,[16] Jan Leciejewski,[17] Karol Potkański,[18] Kazimierz

[7] A. Winiarz, *Bartne prawo* [in:] *Wielka Encyklopedya Powszechna Ilustrowana*, vol. 7, Warszawa 1892, p. 9 ff.

[8] P. Dąbkowski, *Bartnictwo w dawnej Polsce. Szkice gospodarczo-prawne*, Lwów 1923; *idem*, *Prawo prywatne polskie*, vol. 1, Lwów 1910, pp. 17, 31–34, 40, 316; vol. 2, Lwów 1911, pp. 54, 123–124, 223–224.

[9] J. Rafacz, *Biecka ordynacja bartna z r. 1538*, "Themis Polska" 1933, series III, vol. 8, pp. 27–34; *idem*, *Regale bartne na Mazowszu w późniejszym średniowieczu*, "Studja nad Historją Prawa Polskiego" vol. 18, no. 1, Lwów 1938.

[10] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa w dobrach monarszych w Polsce*, Poznań 1995; *eadem*, *Bartnicze prawo karne*, "Pszczelarstwo" 1984, no. 3, pp. 18–20; *eadem*, *Regale bartne i wolność bartna w dawnej Polsce*, ZN USz, Roczniki Prawnicze 1993, no. 4; *eadem*, *Podział terytorialny obszarów bartnych domeny w dawnej Polsce*, ZN USz, Roczniki Prawnicze 1994, no. 5. See also the critical review by T. Wiślicz, *Ewa Ferenc Szydełko, "Organizacja i funkcjonowanie bartnictwa w dobrach monarszych w Polsce"*, Poznańskie TPN, Wydział Historii i Nauk Społecznych, Prace Komisji Historycznej, vol. 49, Poznań 1995, pp. 151, bibl., ilustr., KHKM 1996, R. 44, pp. 437–441, as well as a short summary of Ewa Ferenc-Szydełko's monograph by W. Olszewski, *Ewa Ferenc-Szydełko, "Organizacja i funkcjonowanie bartnictwa w dobrach monarszych w Polsce" (The Organisation and Functioning of Beekeeping in Royal Estates in Poland*), *Poznańskie Towarzystwo Nauk, Wydział Historii Nauk Społecznych, Prace Komisji Historycznej, vol. 49, Wydawnictwo PTPN, Poznań 1995, 151 pp., 26 ill.*, "Quaestiones Medii Aevi Novae" 1997, vol. 2, p. 199.

[11] F. Rawita-Gawroński, *Prawo bartne XVI wieku*, Lwów 1895; A. Braun, *Z dziejów bartnictwa w Polsce. W sprawie art. 3-go ustaw bartnych mazowieckich z r. 1401*, Warszawa 1911 (see also the review by I. Baranowski in KH 1911, pp. 561–563); J. Kwapiszewski, *Z dziejów bartnictwa na Mazowszu w w. XV* [in:] *Księga pamiątkowa ku uczczeniu dwudziestopięcioletniej działalności naukowej Prof. Marcelego Handelsmana*, Warszawa 1929, pp. 167–177; M. Białobrzeski, *Przepisy prawnokarne w dwóch zapomnianych zwodach prawa bartnego z 1559 i 1616 r.* [in:] *Culpa et poena. Z dziejów prawa karnego*, ed. M. Mikuła, Kraków 2009, pp. 137–147; K. Górski, *Prawo bartne w Polsce w XVI-XVIII wieku jako prawo zawodowe*, „Studenckie Zeszyty Historyczne" 2016, no. 22, pp. 107–129.

[12] S. Kutrzeba, *Historja źródeł dawnego prawa polskiego*, vol. 2, Lwów 1926, pp. 346–349; Z. Kaczmarczyk, *Demokracja szlachecka* [in:] *Historia państwa i prawa Polski*, ed. J. Bardach, vol. 2: *Od połowy XV wieku do r. 1795*, 4th ed., Warszawa 1971, pp. 55–56; W. Uruszczak, *Historia państwa i prawa polskiego*, vol. 1: *(966–1795)*, 3rd ed., Warszawa 2015, p. 156.

[13] L. Krzywicki, *Kurpie*, Ostrołęka 2007 (re-issue of the work by L. Krzywicki first published by "Biblioteka Warszawska" in 1892), *passim*, in particular pp. 83–94, 95–119.

[14] Z. Gloger, *Bartne prawo* [in:] *idem*, *Encyklopedia staropolska ilustrowana*, vol. 1, Warszawa 1958, pp. 117–120. Gloger's work was the basis for the encyclopaedia entry by A. Brückner, *Barć, bartnik, prawo bartne* [in:] *idem*, *Encyklopedia staropolska*, vol. 1: *A–M*, Warszawa 1937, pp. 73–75.

[15] A. Jabłonowski, *Podlasie. Polska XVI wieku pod względem geograficzno-statystycznym*, Źródła dziejowe, vol. 17, pt. 3, Warszawa 1910, pp. 156–160.

[16] A. Chętnik, *Puszcza kurpiowska*, Ostrołęka 2004 (reprint of the 1913 edition), pp. 20–36.

[17] J. Leciejewski, *Sądy bartne w Polsce*, "Pasiecznik Wzorowy" 1918; *idem*, *Znamiona bartnicze*, "Pasiecznik Wzorowy" 1919 (cited in: K. Wolski, *Bartnictwo i pasiecznictwo dorzecza Sanu w XV i XVI w.*, "Annales Universitatis Mariae Curie-Skłodowska, Sectio B: Geographia, Geologia, Mineralogia et Petrographia" 1952 (publ. 1955), vol. 7, p. 168).

[18] K. Potkański, *Bartnictwo i organizacja bartnicza (Kurpiowie)*, "Sprawozdania z posiedzeń Akademii Umiejętności w Krakowie" 1895, vol. II: *Wydział Historyczno-Filozoficzny*, Kraków 1896, pp. 9–11; *idem*, *Studja osadnicze* [in:] *idem*, *Pisma pośmiertne*, ed. F. Bujak, Poznań 2004, pp. 126–128, 165–196.

Tymieniecki,[19] Jerzy Rundstein,[20] Alojzy Wójtowicz,[21] Maria Dobrowolska,[22] Otto Hedemann,[23] Karol Górski,[24] Franciszek Piaścik,[25] Krystyna Pieradzka,[26] Krzysztof Wolski,[27] Antoni Żabko-Potopowicz,[28] Gerard Labuda,[29] Maria Dembińska,[30] Józef Mazurkiewicz,[31] Jerzy Walachowicz,[32] Jerzy Senkowski,[33] Romuald Żukowski,[34] Kazimierz Heymanowski,[35] Józef Półćwiartek,[36] Anna Borkiewicz-Celińska,[37] Stanisław Barański,[38] Ewa Wroczyńska,[39] Andrzej Markowski,[40] Hubert Wajs,[41]

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[19] K. Tymieniecki, *Sądownictwo w sprawach kmiecych a ustalanie się stanów na Mazowszu pod koniec wieków średnich*, Poznań 1922, pp. 70–84.

[20] See above note no. 6.

[21] A. Wójtowicz, *Obelść, obelnicy i prawo obelne*, Warszawa 1930, *passim*.

[22] M. Dobrowolska, *Osadnictwo puszczy sandomierskiej między Wisłą i Sanem*, Kraków 1931, pp. 17–18.

[23] O. Hedemann, *Dawne puszcze i wody*, Wilno 1934, pp. 125–144; *idem*, *Dzieje Puszczy Białowieskiej w Polsce przedrozbiorowej (w okresie do 1798 roku)*, Warszawa 1939, pp. 209 ff., 277–282.

[24] K. Górski, *Mało znany pomnik prawa bartnego pomorskiego*, "Rocznik Gdański" 1933/1934, vol. 7/8, pp. 332–347.

[25] F. Piaścik, *Osadnictwo w Puszczy Kurpiowskiej*, Warszawa 1939, pp. 23–29.

[26] K. Pieradzka, *Uwagi o bartnictwie na Łużycach*, "Pamiętnik Słowiański" 1949, vol. 1, pp. 83–100.

[27] K. Wolski, *Bartnictwo i pasiecznictwo dorzecza Sanu…*, *passim*, in particular pp. 109–130, 151–161; *idem*, *Z dziejów bartnictwa we wsiach na prawie wołoskim w starostwach przemyskim i sanockim*, KHKM 1958, vol. 6, pp. 359–364.

[28] A. Żabko-Potopowicz, *Dzieje bartnictwa w Polsce w świetle dotychczasowych badań*, RDSG 1953, vol. 15, pp. 7–52. This work is however rather heavily "saturated" with Marxist methodology. See also the review by K. Tymieniecki in "Roczniki Historyczne" 1953–1954 (publ. 1956), no. 21, pp. 342–345.

[29] G. Labuda, *Nieznany pomnik polskiego prawa bartnego na Pomorzu*, "Rocznik Gdański" 1955, vol. 14, pp. 342–374.

[30] M. Dembińska, *Kilka uwag o roli bartnictwa w gospodarce wiejskiej polskiego średniowiecza*, KHKM 1958, vol. 6, pp. 343–358.

[31] J. Mazurkiewicz, *Zabytek prawa bartnego w Wierzchowiskach z ostatnich lat Rzeczypospolitej szlacheckiej*, CPH 1958, no. 2, pp. 291–302.

[32] J. Walachowicz, *Monopole książęce w skarbowości wczesnofeudalnej Pomorza Zachodniego*, Poznań 1963, pp. 155–158.

[33] J. Senkowski, *Skarbowość Mazowsza od końca XIV wieku do 1526 roku*, Warszawa 1965, pp. 82–90.

[34] R. Żukowski, *Wpływ bartnictwa na kształtowanie się kultury ludowej w byłym starostwie łomżyńskim*, "Literatura Ludowa" 1962, R. 6, no. 4–6, pp. 42–48; *idem*, *Znamiona bartne nowogrodzkie*, "Pszczelarstwo" 1964, no. 12, pp. 7–8; *idem*, *Bartnictwo w Zagajnicy Łomżyńskiej w okresie od XVI do połowy XIX wieku*, Białystok 1965, *passim*.

[35] K. Heymanowski, *Podstawy organizacyjno-prawne bartnictwa na Mazowszu*, "Sylwan" 1969, no. 11, pp. 9–30; *idem*, *Z badań nad gospodarką bartną na Mazowszu (XV–XVIII w.)*, "Sylwan" 1970, no. 4, pp. 29–53; *idem*, *Gospodarka leśna na Mazowszu w okresie feudalizmu (dobra królewskie)*, Kraków 1970, pp. 116–148 ("Zeszyty Naukowe Wyższej Szkoły Rolniczej w Krakowie", no. 63/19); *idem*, *Lasy i leśnictwo w Polsce przedrozbiorowej w świetle współczesnego piśmiennictwa, kartografii i prawodawstwa*, "Studia i Materiały z Dziejów Nauki Polskiej, series B. Historia Nauk Biologicznych i Medycznych" 1980, no. 30, pp. 16, 30–35.

[36] J. Półćwiartek, *Położenie ludności wiejskiej starostwa leżajskiego w XVI–XVIII wieku*, Warszawa–Kraków 1972, pp. 130, 143–145, 179–185.

[37] A. Borkiewicz-Celińska, *Kamieńczykowska księga sądów bartnych 1501–1517 (fragmenty)*, KHKM 1974, vol. 22, no. 2, pp. 255–282.

[38] S. Barański, *Dzieje bartnictwa w Puszczy Świętokrzyskiej w zarysie*, Kielce 1979, pp. 24–43.

[39] E. Wroczyńska, *Eksploatacja lasów na Podlasiu w XVI w.* [in:] *Studia nad społeczeństwem i gospodarką Podlasia w XVI–XVIII w.*, Warszawa 1981, pp. 145–171.

[40] A. Markowski, *O barciach i bartnikach w Zagajnicy Ostrołęckiej*, Ostrołęka 1982, *passim*.

[41] H. Wajs, *Bartnicy z Jabłonny i ich "prawo bartne" z XVII–XVIII w.*, "Sylwan" 1984, no. 10, pp. 69–74.

Urszula Kuczyńska,[42] Grzegorz Białuński,[43] Michał Kargul,[44] and Maria Weronika Kmoch.[45]

1.3. Definition of honey hunting law

For the systematic arrangement and characterisation of the Old Polish sources of honey hunting law, definition is essential. It is, after all, impossible to research the sources of law without first clearly defining what this law is.

It seems that this problem was best addressed by Adam Braun who, writing about customary honey hunting law, argued that it encompassed relations "between honey hunters and the owners of primeval forests and domains, but also between the honey hunters themselves as well as between them and their direct honey hunting masters".[46] This researcher thus highlighted the subjective aspect of honey hunting law. In his view, the norms belonged to honey hunting law, in that they regulated legal relationships in which the parties were honey hunters. To this characterisation may be added (penal) norms which protected the rights of honey hunters.[47]

One may add to this definition that the object of regulation in honey hunting law were fundamentally questions related to honey harvesting. It included, among other things, the relationships of honey hunters to their domanial lords (their reciprocal rights and obligations), as well as civic relations directly related to honey harvesting (e.g. the sale or inheritance of honey trees). Penal norms did not regulate all offences against honey hunters, but generally imposed penalties for offences that directly affected their profession (e.g. theft of honey, beehives or tools or causing damage to honey trees).

1.4. The character of honey hunting law

With a definition of honey hunting law in hand, one can undertake an attempt to describe its character, in other words the place of norms in the system of the sources of law in Old Poland.

Taking into account the definition of honey hunting law adopted above, one may note that its designata can be found in the sources of Polish common law (so-called *ius commune*). These were, by way of example, penal provisions imposing sanctions for the

[42] U. Kuczyńska, *Bartnictwo Kurpiowskiej Puszczy Zielonej*, Łomża 2004, *passim*.

[43] G. Białuński, *O bartnictwie w Prusach Krzyżackich i Książęcych na obszarze Wielkiej Puszczy w XIV–XVI w*. [in:] *Las w kulturze polskiej*, vol. 5, ed. W. Łysiak, Poznań 2007, pp. 391–403. Herein also references to other works by the author.

[44] M. Kargul, *„Abyście w puszczach naszych szkód żadnych nie czynili…" Gospodarka leśna w województwie pomorskim w latach 1565–1772*, Gdańsk 2012; *idem*, *Bartnictwo na ziemi bytowskiej w okresie nowożytnym*, "In Gremium. Studia nad Historią, Kulturą i Polityką" 2011, vol. 5, pp. 57–72.

[45] M.W. Kmoch, *Księga sądu bartnego zachodniej Kurpiowszczyzny z lat 1710–1760. Możliwości badawcze*, "Teka Historyka" 2016, no. 52, pp. 54–71.

[46] A. Braun, *Z dziejów bartnictwa w Polsce…*, p. 2.

[47] The role of norms protecting the rights of beekeepers was in fact already pointed out by A. Braun (*Z dziejów bartnictwa w Polsce…*, p. 3), and subsequently also by A. Żabko-Potopowicz (*Dzieje bartnictwa w Polsce…*, p. 14).

offenders who damaged honey trees or honey and beehive thieves (e.g. in the Statutes of Casimir the Great or the *Correctura iurium* of 1532), as well as norms regarding the honey harvesting *regale* and the tributes of honey hunters (the Statute of Warta, the constitution of 1538). Analogous regulations can be found also in the Statutes of Lithuania. These norms applied across the entire Kingdom of Poland (or in the Grand Duchy of Lithuania, respectively) and were directed to people who were not members of honey hunting communities, too.

Taking above-mentioned examples into consideration, the assertion by Przemysław Dąbkowski may seem surprising that honey hunting law was particular law (*ius speciale*) and did not count as part of common law (*ius commune*). In his view, honey hunting law constituted, as particular law, a collection of norms that excluded the application of common law (i.e. *leges speciales*) and applied to particular honey-hunting communities.[48] These were thus narrow conceptualisations, resulting surely from the fact Dąbkowski based his research on published digests of honey hunting law (and so sources associated with concrete honey hunting communities),[49] which distorted the results of his work. Nevertheless, it should be noted that Dąbkowski was correct to assert that honey hunting law applied to honey hunting communities as particular law.

It can be accepted that the above definition of honey hunting law encompassed both norms of common law and of particular law. As a result, all of these norms may be described as "honey hunting law *sensu largo*", as they encompass the entire body of legal norms regulating honey harvesting in pre-1795 Poland. On the other hand, the law functioning in particular honey hunting communities (*ius particulare* in Dąbkowski's approach) may be described with the term "honey hunting law *sensu stricto*". At the same time, it must be emphasized that this distinction is not exclusive in nature. Its aim is to underscore the distinctness of the laws for particular honey hunting communities, not only from common law, but also from (likely being part of domanial law) rural law. Norms *sensu stricto* were often closely linked to the honey hunters' organisation operating in a given territory (their peculiar "vocational self-government"). A characteristic trait of these norms was their homonymity, i.e. their applicability within the area of a particular honey hunters' community (fundamentally, because penal norms, the aim of which was to protect goods valuable to honey hunters, could be applied to "ordinary" residents, who as a rule were subject to the same domanial lord[50]). Decisive for this distinction is ordinarily the addressee of the legal norms. In the law *sensu largo* it could

[48] P. Dąbkowski, *Prawo prywatne polskie*, vol. 1, pp. 17, 31–34, 40. Cf. A. Braun, *Z dziejów bartnictwa w Polsce…*, p. 2. Regarding the concept of *ius commune* see above all W. Uruszczak, *Sejm Walny Koronny w latach 1506–1540*, Warszawa 1980, p. 131–132; *idem*, *Konstytucja* Nihil Novi *z 1505 r. i jej znaczenie* [in:] *W pięćsetlecie Konstytucji* Nihil Novi*. Z dziejów stanowienia prawa w Polsce*, ed. A. Ajnenkiel, Warszawa 2006, pp. 19–23.

[49] See e.g. P. Dąbkowski, *Prawo prywatne polskie*, vol. 1, p. 316, vol. 2, p. 54, 123–124.

[50] See e.g. A. Tarnawski, *Działalność gospodarcza Jana Zamoyskiego, kanclerza i hetmana w. kor. (1572–1605)*, Lwów 1935, p. 204, where the author reported the content of a 1604 instruction by Jan Zamoyski to the honey hunting judge Mikołaj Iwaszkowicz from the Szczebrzeszyn domain. On account of the damage caused by bondsmen in the local primeval forest, Zamoyski ordered that the bondsmen be punished for damaging the forest and directed Iwaszkowicz to execute the decision. Note should be taken also of the persona of the honey hunting judge in question; this reference testifies to the operation of the honey hunters' organisation there. In Tarnawski's view, honey hunting judges had oversight of the forest, and one of their main tasks was to supervise honey hunting. (*ibidem*, pp. 203–204). Somewhat more information regarding

be unspecified, while particular honey hunting law, as a general rule, indicated a defined community of honey hunters or its members.

Of course, particular law (that is, honey hunting law *sensu stricto*) regulated honey hunting relations much more broadly than did the law *sensu largo.* In particular, it also covered questions related to honey hunting communities, their internal structure and external relations with their superiors (i.e. domain owners or manor administrators), potentially also the obligations of the latter to the vocational associations and honey hunters. The norms constituting "non-particular" honey hunting law did not apply directly to the vocational honey hunter communities but were in effect as Polish (or Lithuanian) common law. Moreover, norms were in effect, not belonging to common law, which also regulated questions related to beekeeping (e.g. as part of domanial law). Both groups, through their more or less universal character, protected the property of people who were casually engaged in honey harvesting, regulated their rights and obligations, yet did not necessarily normalise areas related to professional honey hunting.

It does not seem appropriate to qualify the existence of a particular honey hunting law with the functioning of an organisation of honey hunters in a given community, although as a rule they were interconnected. The foundation for the existence of the vocational self-government of honey hunters, aside from their own organs and courts, was also honey hunting law. One should not invert this dependency. Specifically, the operation within a given honey hunters' community of certain customs or customary obligations toward higher authorities (e.g. honey tributes) without any formally organised structure was possible.

Old Polish honey hunting law can thus be generally defined as a set of legal norms (customary or statutory), which regulated relations between honey hunters, but also between honey hunters and the patrimonial authorities (i.e. domanial lords), or protected the rights of honey hunters (the subjective aspect), and its subject was fundamentally questions related with carrying out the vocation of honey hunter (the objective aspect). Part of these norms were closely related to particular honey hunting communities and constituted their particular law, and as a rule also the foundation for the self-government and autonomy of honey hunting organisations. It is quite certain that the character of these norms allows them to be described as honey hunting law *sensu stricto*, because they were much more strongly than others with the functioning of particular communities. They were also distinguished by how fundamentally the norms were targeted directly at specific honey hunting communities or their members, and the scope of regulated relations was broader than in other norms.

The above definition is based in part on theses found in previous literature (above all expressed *implicite* by A. Braun).[51] At the same time, however, it constitutes an attempt to order these and to consider the proposition to distinguish the norms of honey hunting law *sensu largo* and *sensu stricto*.

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honey hunting in the Szczebrzeszyn domain can be found in A.B. Sidorowska, *Klucz szczebrzeski Ordynacji Zamojskiej w XVII i XVIII wieku*, Lublin 2009, pp. 145–149.

[51] A. Braun, *Z dziejów bartnictwa w Polsce…*, p. 2. It should be emphasised that the author in his definition referred to local law (in Masovia), which "encompassed all relations which were insufficiently considered in the general legislation of the country" (*ibidem*), thus *a limine* rejected in his proposal the norms of Polish common law.

2. *Fontes iuris oriundi*

For the sources of honey hunting law, one may apply the classic division into *fontes iuris oriundi* and the *fontes iuris cognoscendi*. This work is devoted to the first of these.

2.1. Introduction

As *fontes iuris oriundi*, it has been accepted in legal studies to describe law-making actions, or "factors, which give force to legal norms". The author of this assertion, Stanisław Kutrzeba, counted among sources of law customary law and statutes.[52] It was thus not a set of extralegal factors (social, economic, political, or ideological) influencing the creation of legal norms, which in legal studies are usually termed the material sources of law. These were also not the sources of knowledge about the law (*fontes iuris cognoscendi*), or the actual results of the process of law creation such as sets of regulations or statutes.[53] In the following sections, I shall use the phrases *fontes iuris oriundi* and "sources of law" interchangeably.

In an address delivered in camp outside of Smolensk in 1610, Jan Kuczborski, secretary of the royal chancellery, asserted that prevailing in the Kingdom of Poland was "not savagery, that shatters the order of things, but rather customary law and statutes".[54] Indeed, usually identified as the sources of law in force in pre-1795 Poland are customary law and statutory law. Although an opposite sign is frequently placed between these two concepts, it should be remembered that they both contributed to the existence of one legal system, in which customary law was regulated by the authorities of statutory law.[55] Moreover, each area permeated the other, not only in the area of common law.[56] Old Polish honey hunting law was no exception to this.

2.2. Customary law

2.2.1. Honey hunting law *sensu largo*

Broadly understood, honey hunting law can be found in the oldest forms of Polish customary law (The Book of Elbląg). These were norms which included penalties for theft

[52] S. Kutrzeba, *Wstęp do nauki o prawie i państwie*, Kraków 1946, p. 11. Cf. S. Wronkowska, *Tworzenie prawa* [in:] A. Redelbach, S. Wronkowska, Z. Ziembiński, *Zarys teorii państwa i prawa*, Warszawa 1993, p. 179. The *fontes iuris oriundi* are also termed formal in the literature (S. Płaza, *Historia prawa w Polsce na tle porównawczym*, pt. 1, ed. 2, Kraków 2002, p. 35; W. Uruszczak, *Historia państwa i prawa polskiego*, p. 70).

[53] S. Wronkowska, *Tworzenie prawa*, p. 179.

[54] S. Kobierzycki, *Historia Władysława, królewicza polskiego i szwedzkiego*, ed. J. Byliński, W. Kaczorowski, trans. M. Krajewski, Wrocław 2005, p. 66.

[55] W. Uruszczak, *Zwyczaje ziemskie w Statutach Kazimierza Wielkiego*, SDPPP 1999, vol. 4, pp. 179, 186–187.

[56] L. Łysiak, *Prawo i zwyczaj w praktyce małopolskich sądów wiejskich XV–XVIII wieku*, CPH 1982, no. 2, pp. 12–13.

of bees, and also principles for how to proceed in the event of a swarm (§ 13).[57] An account of similar customs in Samogitia was provided by Józef Kibort.[58] In customary law in Greater Poland cutting down three trees with bees was harshly punished with the imposition of the heavy *septuaginta* fine.[59] More attention should be devoted to the institutions of honey tributes and the honey harvesting *regale*.

2.2.1.1. *Honey tributes*[60]

Tributes in honey appeared in various forms in Polish lands beginning in the Middle Ages. Their origins have not been determined, but it should nonetheless be emphasised that Karol Modzelewski did not believe them to have appeared everywhere.[61] Not only did honey hunters pay these, but also villeins who engaged in beekeeping on the side, also in the modern period.[62] These were paid as a "state" tax, tithed, subjects made these to their domanial lords. With time, the tributes in kind were replaced by a monetary equivalent, and these contributions were regulated also in statutory law (see below). Wax was also subject to tributes made by subjects.[63]

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[57] *Najstarszy Zwód Prawa Polskiego*, ed. and rev. J. Matuszewski, J. Matuszewski, Łódź 1995, p. 74. See also: R. Hube, *Prawo polskie w wieku trzynastym*, Warszawa 1874, p. 178.

[58] J. Kibort, *Żmudzkie prawo bartnicze*, "Wisła" 1893, vol. 7, pp. 297–298.

[59] The regulation in Art. XXXII of the Statute of Greater Poland of Casimir the Great was based on this legal norm. S. Roman, *Geneza statutów Kazimierza Wielkiego*, Kraków 1961, pp. 167–169.

[60] The issue of honey tributes has been addressed in a range of works, although as a rule only on the margins. Noteworthy is the most recent work by E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 31–32, 48–58, 72–74, as well as older work by O. Balzer, *Narzaz w systemie danin książęcych pierwotnej Polski*, "Studya nad Historyą Prawa Polskiego", vol. 11, Lwów 1928, pp. 119–125; A. Kutrzebianka, *Vesnica – danina miodowa*, RDSG 1938, vol. 7, pp. 73–105; K. Wolski, *Bartnictwo i pasiecznictwo dorzecza Sanu…*, pp. 111–117, 151–161; K. Buczek, *Książęca ludność służebna w Polsce wczesnofeudalnej*, Wrocław–Kraków 1958, pp. 79, 81; *idem*, *O narzazie* [in:] *idem*, *Studia z dziejów ustroju społeczno-gospodarczego Polski piastowskiej*, vol. 2, ed. W. Bukowski, Kraków 2006, p. 175. See also remarks by S. Smolka, *Mieszko Stary i jego wiek*, 2nd ed., ed. J. Dobosz, Poznań 2011, pp. 43, 343–344; P. Dąbkowski, *Bartnictwo w dawnej Polsce…*, pp. 20–22; A. Tarnawski, *Działalność gospodarcza Jana Zamoyskiego…*, pp. 202–203; J. Matuszewski, *Immunitet ekonomiczny w dobrach kościoła w Polsce do roku 1381*, Poznań 1936, pp. 65–66; J. Rafacz, *Regale bartne na Mazowszu…*, s. 13; A. Żabko-Potopowicz, *Dzieje bartnictwa w Polsce…*, pp. 10–11; H. Karbownik, *Ciężary stanu duchownego w Polsce na rzecz państwa od roku 1381 do połowy XVII wieku*, Lublin 1980, p. 69–70. On tributes in Masovia, see K. Dunin, *Dawne mazowieckie prawo*, Warszawa 1880, p. 104; J. Senkowski, *Skarbowość Mazowsza*, pp. 86–90; on tributes in the Grand Duchy of Lithuania see J. Jurkiewicz, *Powinności włościan w dobrach prywatnych w Wielkim Księstwie Litewskim w XVI–XVIII wieku*, Poznań 1991, pp. 82–106. On tributes in the Duchy of Pomerania, see J. Walachowicz, *Monopole książęce…*, pp. 94, 156–157.

[61] K. Modzelewski, *Chłopi w monarchii wczesnopiastowskiej*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1987, pp. 92–93. Modzelewski at the same time stated that honey was the subject of various tributes paid in kind. *Idem*, *Organizacja gospodarcza państwa piastowskiego (X–XIII wiek)*, 2nd ed., Poznań 2000, p. 149.

[62] For example, in light of an act by King Sigismund II Augustus from 1556, bondsmen in the village of Brzezinki (Sandomierz voivodeship) were to pay *mellis vero iuxta consuetudinem in aliis bonis nostris regiis servari* (*Materyały do dziejów robocizny w Polsce w XVI wieku*, AKP 9, ed. S. Kutrzeba, Kraków 1913, no. 69). In the village of Nawóz pertaining to the Lwów captainship (1561), the peasants and Orthodox priests named in the act "according to olden customs gave a *korzec* (a bushel – KG) of honey to the castle from the forest, from hunting and from fields". In this document, the captain of Lwów changed the tributes into a rent (8 *grzywnas* annually; 1 *grzywna* [a mark – KG] was a monetary unit equal to 48 groschens) (*ibidem*, no. 77).

[63] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 78–82; J. Jurkiewicz, *Powinności włościan w dobrach prywatnych…*, pp. 104–105. Alternately, U. Kuczyńska, *Bartnictwo kurpiowskiej*

In light of these synthetic remarks, the question should be posed as to whether the institutions of honey tributes (and to be more precise, the legal norms that regulated them) can be ascribed at all to honey hunting law. Considering the definition adopted above, in particular tributes should be dismissed which were paid as part of "the burdens of *ius ducale*", as these regarded relations between sovereign and subject (and thus were "public"). Thus, the only tributes (and strictly speaking, the norms regulating them) paid by honey hunters to their domanial lords may be regarded as belonging to honey hunting law. Without a doubt, that lord could also be the monarch himself. For example, Masovian honey hunters, in exchange for the use of royal beehives turned part of their yield over to the ruler; they also gave him marten pelts.[64] Of course, tributes were paid by members of honey hunting communities – the norms regulating their payment clearly belonged to particular honey hunting law (*sensu stricto*).

2.2.1.2. *Honey harvesting* regale

The status of royal honey hunters was regulated by customary law. Their privileged position resulted from the royal honey harvesting *regale* (*regale* was a term describing royal monopolies or activities reserved to the monarch in pre-1795 Poland). According to the most recent findings, its essence was the prerogative to make use of wild beehives by royal honey hunters as well as on private manors.[65] The *regale* above all regulated the relations between honey hunters and their superior (the king) as well as the owners of manors (as a rule, the nobility). One can thus state that in light of the definition adopted here, this counted as part of honey hunting law.

The origin of the honey hunting *regale* is most likely linked to the privileges of the monarch as well as court decisions. Bearing in mind the problem raised over a decade ago (and still unresolved) of the origin or royal *regalia* in Poland[66] there is no way to characterise the process of the emergence (and disappearance) of the honey harvesting *regale*. Research is made particularly difficult by the presumption that the development likely proceeded with different dynamics in different parts of the Crown. Moreover, under constant discussion is the question of the presence of the honey harvesting *regale* outside of Masovia.[67] With all that in mind, it should be said that the institution of the honey harvesting *regale* is certainly worthy of a monographic study.[68]

Puszczy Zielonej, p. 40.

[64] According to K. Dunin (*Dawne mazowieckie prawo*, p. 104), honey was one of the tributes most frequently paid in kind under *ius ducale* in Masovia. See also J. Senkowski, *Skarbowość Mazowsza…*, pp. 86–90.

[65] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, p. 35.

[66] S. Gawlas, *O kształt zjednoczonego Królestwa. Niemieckie władztwo terytorialne a geneza społeczno-ustrojowej odrębności Polski*, 2nd ed., Warszawa 2000, pp. 79 ff.

[67] T. Wiślicz, *Ewa Ferenc Szydełko, "Organizacja i funkcjonowanie bartnictwa w dobrach monarszych w Polsce"…*, p. 439.

[68] In the view of Ferenc-Szydełko, when granting manors or confirming these, the ruler "retained for himself the wild beehives there. In this way, he retained the right for his subjects occupied in honey harvesting to enter into privately and church-owned forests" (*eadem*, *Organizacja i funkcjonowanie bartnictwa…*, p. 33). He could also renounce his prerogative through alienation of property *cum mellificiis* (*ibidem*, pp. 30, 126). In the author's opinion, honey harvesting *regale* may be regarded as a "prerogative to exploit the honey of the entire area of the state regardless of any extant property relations" (*ibidem*, p. 35); unfortunately, the researcher did not address at all the problem of the origin of this institution in regard to the documentary

A range of obligations and rights of honey hunters as part of the *regale* (e.g. access to and use of wild beehives, ownership of a beehive that was part of a fallen tree) were regulated by customary law.[69] Ducal or royal honey hunters were obliged by custom to bear certain burdens on behalf of their lords. The most important of these were certainly

clauses presented. Writing earlier in favour of the existence of the honey harvesting *regale* in Masovia was Rafacz (*Regale bartne na Mazowszu…*, pp. 4, 8–10). The origin of the *regale* was associated with the reservation of "honey benefits" by rulers when granting or selling royal property (the "*exceptis mellificiis*" clause). In his view, over time (the 15th century) Masovian courts were to accept the presumption of the honey harvesting *regale* also for family estates, which led to the expansion of the *regale* to this type of estate as well. He accepted the existence of the *regale* in other parts of the Crown as well, although only for royal estates that had been granted or sold (*ibidem*, pp. 10–11, note 3). Rafacz's view regarding the Masovian *regale* supported by Żabko-Potopowicz (*Dzieje bartnictwa w Polsce…*, pp. 11, 24), Heymanowski, and Bardach in his synthetic history of the Polish political system (*Historia państwa i prawa Polski*, vol. I: *Do połowy XV wieku*, 4th ed., Warszawa 1973, p. 469). In Heymanowski's view, it appeared earlier than in the latter half of the 14th century (*Podstawy organizacyjno-prawne bartnictwa…*, pp. 11–15). This relied on the presumption of the *regale* being in effect, unless with the granting of land the ruler included the "honey harvesting prerogative" with the donatory (see also K. Dunin, *Dawne mazowieckie prawo*, p. 50). This construction in effect was supposedly different in the Crown, where it was the monarch who had to reserve such "prerogatives" for himself. Dąbkowski described an ambiguous character of the Masovian *regale*. He linked its existence to royal bestowals, whereby he accepted as a principle that honey harvesting was a prerogative linked with the ownership of land, whereas Masovian lords by custom excluded "revenues" from honey harvesting when bestowing land (*idem*, *Prawo prywatne polskie*, vol. 2, pp. 223–224; *idem*, *Bartnictwo w dawnej Polsce…*, pp. 6, 16). Based on Dąbkowski's findings and his own research, Wolski advanced the thesis that in the area of the San river basin he studied the honey harvesting *regale* arose from the royal land *regale*. He assumed that the honey harvesting *regale* included the rights of royal honey hunters to exploit hives in private forests and simultaneously to pay tributes not to the owner of the forest, but to their own lord. Starting in the 15th century, the rights to beehives was linked with the ownership of land and became part of the *ius militare* (or so-called "knight-law"), and "the remnants of the honey harvesting *regale*" was visible in the "vanishing principle of personal ownership of revenues from beehives" (*idem*, *Bartnictwo i pasiecznictwo dorzecza Sanu…*, pp. 113–118). Citing Dąbkowski, Tymieniecki described the Masovian *regale* as "partial". This supposedly relied on the reservation of the superior ownership of beehives when bestowing land by use of the *exceptis mellificiis* clause, and so it was not in effect everywhere (*idem*, *Sądownictwo w sprawach kmiecych…*, pp. 70–71). Senkowski, and after him Borkiewicz-Celińska believed that the honey harvesting *regale* (in the form of a prerogative to use beehives on private estates) took shape only near the end of the 14th century (J. Senowski, *Skarbowość Mazowsza…*, pp. 82–83; A. Borkiewicz-Celińska, *Kamieńczykowska księga sądów bartnych 1501–1517…*, pp. 255–256). Buczek rejected entirely the existence of the honey harvesting *regale* in the form of a royal monopoly, recalling that in the Middle Ages "everyone was a bit of a honey hunter". He asserted instead that fundamentally royal honey hunters and "private holdings" owed payment of honey tributes (as part of the forest *regale*), and a grant *cum mellificiis* was to transfer the prerogative to gather the honey tributes on behalf of the landlord (*idem*, *Książęca ludność służebna…*, p. 81). Matuszewski doubted the existence of the honey hunting *regale*, which he linked to the prevalence of honey tributes. He did perceive the *regale* as a monopoly on the production of honey, however, which did not take place (*idem*, *Immunitet ekonomiczny…*, p. 159). On the other hand, Walachowicz, because of the "laconicism of the sources" was not able to convincingly state whether the honey harvesting *regale* existed in the Duchy of Pomerania or not (*idem*, *Monopole książęce…*, p. 156), in many places in his work he understood this through the exclusive rights to the trade in honey belonging to the ruler. Unfortunately, Ferenc–Szydełko did not address any of these concepts, which significantly weakens her deliberations, and the postulate of an analysis of the problem of the origin and character of the honey harvesting *regale*, especially outside of Masovia, remains current. *Regale* in the form of a state monopoly operated in the State of the Teutonic Knights (G. Białuński, *O bartnictwie w Prusach Krzyżackich i Książęcych…*, p. 391).

[69] More broadly these were in ducal and royal forests. J. Rafacz, *Regale bartne na Mazowszu…*, pp. 32–38.

honey tributes.[70] The actions of the nobility in Wizna district, which hindered the work of the honey hunters of Duchess Anna, was described in 1513 as an action *ultra consuetudinem antiquam ac iura praedecessorum illustrissimorum dominorum ducum Masoviae*.[71] In the literature it is accepted that the honey harvesting *regale* functioned until the mid-16th century; after its elimination, the owners of forests obtained the right to purchase wild beehives from the royal honey hunters.[72]

2.2.1.3. *Ingress into forests*

Ingress into grand ducal forests was customary in origin, under which subjects made use of wild beehives located in grand ducal forests. Along with the increasing control of the monarch over the use of the primeval forests, ingress was verified, and the rules for use of them were regulated in statutory law. The granting of rights of ingress also occurred.[73] The institution of ingress, as a regulation of the rules of use by subjects of beehives located on grand ducal estates, may be counted as part of broadly understood honey hunting law.

2.2.2. Honey hunting law ***sensu stricto*** (particular law)

Customary honey hunting law also regulated life and work in the honey hunters' vocational associations. Although, as researchers claim, universal criteria for qualifying norms as customary law cannot be established,[74] it seems to be reasonable to accept that certain norms in force in a given community (in this case a honey hunting association) over a longer period of time were observed in this period and were simultaneously in accordance "with the generally accepted system of values in the given community".[75]

An example of such a vocational association were the honey hunters in the Łomża captainship. A scribe there, Stanisław Skrodzki, claimed that honey hunters "had no

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[70] *Ibidem*, pp. 38–41; E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 53, 56–57.

[71] Mandate of Duchess Anna of Masovia to the courts in Wizna district (Liw, 4.05.1513), IMT 2, no. 203.

[72] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, p. 35; J. Rafacz, *Regale bartne na Mazowszu…*, pp. 66–73. Cf. note 168 doubts regarding acceptance of the year 1550 for the formal elimination of the honey harvesting regale (as part of the confirmation of the law by Sigismund II Augustus).

[73] O. Hedemann, *Dzieje Puszczy Białowieskiej…*, pp. 102–109; K. Wolski, *Bartnictwo i pasiecznictwo dorzecza Sanu…*, p. 118; A. Gryguć, *Użytkowanie puszcz królewskich w Wielkim Księstwie Litewskim i na Podlasiu w XVI wieku przez ludność wiejską w świetle "Ustawy na wołoki" oraz "Ustawy leśnej" z 1567 roku* [in:] *Społeczeństwo i polityka do XVII wieku. Księga pamiątkowa ku czci Profesora doktora Wacława Odyńca w 70-lecie urodzin*, ed. J. Śliwiński, Olsztyn 1994, p. 121; J. Śliwiński, *Grodzieńszczyzna i Podlasie w XV–XVI wieku w Wielkim Księstwie Litewskim (wielkoksiążęce puszcze i włości, eksploatacja, pożary)*, Olsztyn 2010, pp. 80–96, 168. For more about the institution of ingress see H. Łowmiański, *Wchody miast litewskich* [in:] *Dwa doktoraty z Uniwersytetu Stefana Batorego w Wilnie*, Poznań 2005, pp. 19–147.

[74] G.M. Kowalski, *Zwyczaj i prawo zwyczajowe w doktrynie prawa i praktyce sądów miejskich karnych w Polsce (XVI–XVIII w.)*, Kraków 2013, p. 68. It should be emphasised that Polish common law itself did not have such qualifying rules at its disposal. Four conditions for the validity of customary law were adopted by Jakub Przyłuski (and subsequently repeated by Tomasz Drezner). Having been drawn from foreign legal systems, they did not reflect Polish reality, though (H. Grajewski, *Prawo zwyczajowe w* Leges seu statuta ac privilegia Regni Poloniae omnia *Jakuba Przyłuskiego*, ZN UŁ 1967, vol. 52, pp. 121–122).

[75] G.M. Kowalski, *Zwyczaj i prawo zwyczajowe…*, pp. 38–55. See also S. Kutrzeba, *Wstęp do nauki…*, p. 11; H. Izdebski, *Elementy teorii i filozofii prawa…*, Warszawa 2011, pp. 213–214. Cf. S. Wronkowska, *Tworzenie prawa*, p. 183.

written law, and whensoever they were to pass judgement, did they only take ex usu antiquo [emphasis – KG] from their forebears and that custom of judgement by honey hunting law the ones after the others demonstrated consequenter among themselves".[76] Many references to "olden" customs were also contained in *Prawo bartne bartnikom należące* [Honey hunting law particular to honey hunters] from the Przasnysz captainship (written by the captain of the time, Krzysztof Niszczycki).[77]

The peculiarities of honey harvesting (work, and sometimes settlement in forests) fostered the creation of particular systems of honey hunting law in specific communities. In areas such as *Puszcza Zielona* (the Green Forest) in the region of Kurpie, geographic and social conditions (including the existence of numerous communities that worked vocationally in forest beekeeping) had an influence on the peculiar development of customary law.[78]

Initially, matters between Masovian honey hunters were handled by (ducal) itinerant circuit courts.[79] In 15th-century Masovia, itinerant circuit courts still constituted a "state" jurisdiction, i.e. they were not bound by what estate the parties belonged to or the proper-

[76] Skrodzki, pp. 7–8; Similarly in Niszczycki, p. 237: "[…] *ani Maydeburskim, ani prawem Ziemskim, ale ex antiquo usu prawem Bartnicy sądzić się zwykli*" ("[…] neither Magdeburg, nor common law, but by the law ex antiquo usu the honey hunters usually judge").

[77] Niszczycki, p. 221: "[…] *od Boru powinno się dawać miodu po rączce i pieniędzy według starodawnego zwyczaju*" ("[…] from the forests *rączka* of honey [unit of volume – KG] should be given and money according to the olden ways"); p. 224: "*Bywał ten zwyczay iż Starosta Bartny dawał, i obierał do Sądu Bartniki zasiadać, a nieprzysięgłych, z któremi Sądy odprawowali*" ("there once was the custom that the honey hunters' captain gave, and took the honey hunters to sit it court, and the unsworn officiated in court"); p. 243: "*Bywał ten zwyczay starodawny, iż Bartnik Bartnika zapozywał o własność* […]" ("There was an olden custom that a honey hunter would call a honey hunter into court over property […]"); p. 255: "*Księgi Bartne wedle zwyczaiu starodawnego u Starosty Bartnego mają bydź położone* […]" ("Honey harvest registers by olden custom are to be kept with the honey hunting captain"); p. 260: "[…] *ma ich* [podstarościch – KG] *dwa bydź wedle starodawnego zwyczaiu* […]" ("[…] of them [vice-captains – KG] there were to be two according to olden custom […]"); p. 262: "*Bywał ten stary zwyczay w Sądzie Bartnym iż każdy pozwowi iako* peremptorie *pozwany stawić się musiał* […]" ("There was that olden custom in the Honey Harvest Court that everyone called in a lawsuit as *peremptorie* must appear […]").

[78] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 10–11; U. Kuczyńska, *Bartnictwo Kurpiowskiej Puszczy Zielonej*, *passim*; A. Żabko-Potopowicz, *Dzieje bartnictwa w Polsce…*, pp. 14, 31. This phenomenon (describing, among other things, shepherds' courts) was also pointed out by B. Baranowski, *Wyrok sądu owczarskiego z zachodniej Wielkopolski z końca XVIII w.*, "Lud" 1954, pt. 1, p. 538. For more about the existence of vocational honey harvesting, see J. Rutkowski, *Statystyka zawodowa ludności wiejskiej w Polsce w drugiej połowie XVI w.*, Kraków 1918, pp. 298–302, 324. For the region studied (Sandomierz, Bełz, Ruthenia, Podolia voivodeships) J. Rutkowski determined that in the second half of the 16th century, nearly 70% of the people described in sources as honey hunters worked vocationally in honey harvesting (*ibidem*, p. 324). See also: W. Jakóbczyk, *Uwarstwienie ludności wiejskiej w królewszczyznach zachodnich województw Korony w drugiej połowie XVI w.*, RDSG 1936, vol. 5, pp. 47–48, 52, 54. According the author's estimates, in Royal Prussia, 35% of honey harvesters were occupied in vocational cultivation; in Cracow voivodeship this percentage was nearly 9%, in Greater Poland this was a bit over 10%. In the Nowe Miasto Korczyn captainship, vocational honey harvesting was an exceptional phenomenon; it did occur that peasants or smallholders would lease beehives (A. Wyczański, *Uwarstwienie społeczne w Polsce XVI wieku. Studia*, Wrocław 1977, pp. 108–109). Professional honey harvesting of course did not exclude farming as well.

[79] Skrodzki, art. 1; K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, p. 72. A. Wolff, *Studia nad urzędnikami mazowieckimi. 1370–1526*, Wrocław–Warszawa–Kraków 1962, p. 119, argues that before the rise of honey harvesting courts, captains with circuit court scribes exercised jurisdiction over honey hunters.

ties they held.[80] Before Masovian itinerant circuit courts, one might find criminal cases, civil disputes, as well as unargued entries.[81] Over time, honey hunters' organisations began to take up an increasing number of cases. There were separate honey harvesting courts functioning widely in Masovia, Tymieniecki believes, alongside the itinerant circuit courts.[82] These were supervised by the ducal captains as well as circuit scribes; the former assumed full supervision over honey hunting organisations.[83] Honey harvesting courts maintained their own court registers.[84]

Both itinerant circuit courts and honey harvesting courts applied honey hunting law. In the Skrodzki digest we read that "[honey hunters – KG] had their exceptie [exceptions – KG] with which they judged one another".[85] These exceptions constituted the foundation for honey hunting law, something, which set them apart from common law. Also among Jedlnia honey hunters "from olden times, whosoever dares approach someone's bees owes him a fine of 15 *grzywnas* or is put into the headsman's hands. He owes the court of H.M. a fine of 15 *grzywnas* as well".[86] Of course, the customary law that honey hunters used among themselves, changed over time:

> The difference from the present-day Courts is that when a case arose between noble honey hunters regarding some tree, bees, or a marking, and was taken to the honey hunting court, and a submission of an oath was ordered, then this was not submitted in the Court, but at the roots of the tree around which the case revolved. This has ceased in present-day courts.[87]

There may have been some influence on the evolution of customary law by the jurisdiction of courts, but this thesis requires confirmation by primary source research.

Changes in customary law were not always sufficient. If "past, virtuous, God-fearing honey hunters hardly needed the law in writing, because they adored virtue, the fear of

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[80] K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, p. 52; S. Russocki, K. Pacuski, *Ustrój polityczny i prawo* [in:] *Dzieje Mazowsza*, vol. 1, ed. H. Samsonowicz, Pułtusk 2006, pp. 412–414. Itinerant circuit courts held a similar status in the Polish Crown in the 14th century, especially in Greater Poland (see Z. Wojciechowski, *Państwo polskie w wiekach średnich. Dzieje ustroju*, Poznań 1948, p. 334; A. Gąsiorowski, *Powiat w Wielkopolsce XIV–XVI wieku: z zagadnień zarządu terytorialnego i podziałów Polski późnośredniowiecznej*, Poznań 1965, p. 12–17; *idem*, *Początki sądów grodzkich w średniowiecznej Polsce*, CPH 1974, vol. 2, p. 64). The Masovian nobility in the 15th century still had not been able to transform itinerant circuit courts into noble estate courts. See also K. Dunin, *Dawne mazowieckie prawo…*, pp. 213–223.

[81] K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, pp. 72–77.

[82] K. Tymieniecki, *A. Żabko-Potopowicz*, *"Dzieje bartnictwa w Polsce w świetle dotychczasowych badań"*, "*Roczniki Dziejów Społecznych i Gospodarczych", vol. XV, Poznań 1955, s. 7–56* (review article), RH 1953–1954 (publ. 1956), p. 343.

[83] A. Wolff, *Studia nad urzędnikami mazowieckimi…*, pp. 113–114, 119; J. Rafacz, *Regale bartne na Mazowszu…*, p. 58; J. Senkowski, *Skarbowość Mazowsza…*, p. 85. See the resolution of the ducal council from the end of the 15th century (Łomża, 1.10.1499), which named circuit court scribes as the appropriate ones for jurisdiction over honey hunters (IMT 2, no. 163).

[84] K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, pp. 78–84. This author pointed out that honey harvesting courts aspired to exclude matters involving honey hunters from the jurisdiction of itinerant circuit courts. This was a trend that was the reverse of the phenomenon of elimination of non-noble matters (or unpropertied nobles) known in Crown courts, which led in the end to the formation of noble estate (circuit) courts in the Polish Crown in the 15th century.

[85] Skrodzki, art. 1.

[86] A. Wójtowicz, *Obelść, obelnicy i prawo obelne*, p. 21. 1 *grzywna* (a mark) was a monetary unit equal to 48 groschens.

[87] Skrodzki, art. 1.

God, love, faith, and obedience, they then committed no offence against each other in H.M. the King's forest, and for that reason used the law and courts less." Generational change was not favourable for the Łomża honey hunters. "Now the young follow and will continue to follow harmful, intransigent habits, causing Damage in H.M. the King's forests, are disobedient and disdainful of the honey harvesting courts".[88] Skrodzki saw the cause of these negative phenomena in the lack of written laws: "[…] if articles […] will be shown before their eyes in cases, then their intransigence and anger must surely be reduced".[89] The result of the efforts of the honey hunter community was the emerging digests of law.

The customary honey hunting law of honey hunting communities did not require the formal sanction of the domanial authorities for its validity. After all, it was valid before and after the law was recorded and obtained in this way the formal approbation of the domanial lord.[90] The vast majority of the law was autonomous in character, and heteronomous norms, i.e. those referring to individuals who were not part of a honey hunting community, were infrequent exceptions (these were mostly penal norms protecting the rights of honey hunters). Particular customary honey hunting law, similarly to the entirety of domanial law, needed the approbation of the public authorities even less.[91]

Doubtless, however, is that particular customary honey hunting law required acceptance on the part of the domanial lord, just as it was required in the case of local rural law. Approval could be given both expressly and tacitly (no objection).[92] The formation of an organisation of honey hunters (vocational self-government),[93] as well as a digest of honey hunting law[94] required approval (from the lord in the case of private estates, or

[88] *Ibidem*, p. 8.

[89] *Ibidem.*

[90] *Ibidem*, pp. 7–8.

[91] The problem of the conditions for the validity of customary common law was not so clear. Deliberations in this area were made by Old Polish lawyers. And so, Jakub Przyłuski and Tomasz Drezner (who referred to Przyłuski's arguments), cited in their works the conditions for the validity of customary law drawn from foreign legal systems – among which there was no formal legislative sanction (H. Grajewski, *Prawo zwyczajowe w* Leges seu statuta*…*, pp. 121–122). Mikołaj Zalaszowski did not make a clear statement regarding this question (I. Malinowska, *Mikołaj Zalaszowski. Polski prawnik XVII stulecia na tle ówczesnej nauki prawa*, Kraków 1960, p. 297; W. Uruszczak, *Zwyczaj a ustawa w staropolskiej myśli prawniczej* [in:] *Z historii państwa, prawa, miast i Polonii. Prace ofiarowane Profesorowi Władysławowi Ćwikowi w czterdziestolecia Jego pracy twórczej*, ed. J. Ciągwa, T. Opas, Rzeszów 1998, pp. 275–277). One certainly cannot conclude that confirmation of the customary common law (*consuetudines approbare*) was necessary on the basis of the well-known order in the Łaski Statute that local customs be recorded after prior royal confirmation; in practice, customs were applied without acceptance by the state authorities, often in violation of statutory law (H. Grajewski, *Prawo zwyczajowe w* Leges seu statuta*…*, pp. 113, 115, 123–133). On the other hand, W. Uruszczak, *Zwyczaje ziemskie w Statutach Kazimierza Wielkiego*, p. 179, correctly concluded that what was necessary was at least "the absence of opposition on the part of the authorities". See also A. Karabowicz, *Custom and Statute: A Brief History of Their Coexistence in Poland*, "Krakowskie Studia z Historii Państwa i Prawa" 2014, vol. 7, no. 1, pp. 116–118.

[92] J. Rafacz, *Ustrój wsi samorządnej małopolskiej w XVIII w.*, Lublin 1922, pp. 220–223.

[93] This is shown, among others, by documents from ecclesiastical estates (S. Barański, *Dzieje bartnictwa w Puszczy Świętokrzyskiej…*, pp. 24–27, 65–69). Józef Rafacz considered the law "regulating honey hunter relations" by the king as one of the elements of the honey harvesting *regale* (*idem*, *Regale bartne na Mazowszu…*, p. 13).

[94] See Niszczycki, p. 221 and Skrodzki, p. 8. Stanisław Skrodzki wrote that honey hunters made efforts to ensure that "Written legal Articles were strongly approbated by the Lord Captain" – referring to the captain Andrzej Modliszewski (the captain of Łomża from 1581 until his death in 1604 or 1605), who, however, did not confirm the digest. Therefore, there was a second request in 1616 to the captain Adam Kossobudzki (the

both the king and the captain in the case of Crown lands). This right of confirmation arose from ownership of the land (*dominium*), on which the honey hunters' organization and the honey hunting law functioned.[95] Also requiring approval were laws passed by honey hunter communities, which will be discussed further in the section on statutory law. Of course, in practice customary honey hunting law was also accepted by the state authorities – it was applied, although only in the late medieval period, by Masovian circuit courts.[96]

2.2.3. Summary

Customary honey hunting law was a particular law, in that it applied to a concrete community of honey hunters (honey hunting law *sensu stricto*). So it was e.g. in the case of the customary law of royal and ducal honey hunters in the forest of northern Masovia, the traces of which can be found in the Niszczycki and Skrodzki digests. For its validity, it did not require (much like all of domanial law) the approbation of the public authorities, but it had to be at least tolerated by the domanial lord. The remaining norms of customary law, if they did not refer specifically to a given community of honey hunters, can only be called honey hunting law as broadly understood (*sensu largo*).

Along with their organisations, honey hunting law was one of the foundations of the vocational self-government of honey hunters.[97] Both institutions provided the honey hunters' community with the status of a legal entity. Within the *dominium* the community functioned on principles that were analogous to those of a village community (*gromada*) and had the capacity e.g. to pass a digest of honey hunting law.[98] The entire community assembled once a year in order to conduct expulsions, and before the assembly honey hunter officials were sworn in.[99] Their own law, to a large extent based on custom, was for honey hunters the basis for their identity.

2.3. Statutory law

Old Polish law did not have a closed catalogue of the sources of statutory law.[100] The sources of honey hunting law were presented according to the criteria of the authori-

captain of Łomża from 1613 until 1629). Stanisław Kutrzeba (*Historja źródeł…*, vol. 2, pp. 348) presumes that this digest was not confirmed. Regarding the captains of Łomża, see K. Chłapowski, *Starostowie w Wielkopolsce, na Kujawach i Mazowszu 1565–1696 (materiały źródłowe)*, Warszawa 2007, p. 73; *idem, Starostowie niegrodowi w Koronie 1565–1795 (Materiały źródłowe)*, Warszawa 2017, p. 356.

[95] In establishing the honey hunting law in Wierzchowiska, the Wierciński family (the owners) did so "by the right and dispositon of our inheritence" (J. Mazurkiewicz, *Zabytek prawa bartnego w Wierzchowiskach…*, p. 295). Analogically, as part of the *dominium* of the monarch (represented by the captain) or the landowner, statutes of artisanal guilds were confirmed (E. Borkowska-Bagieńska, *Cechowe prawo gospodarcze w miastach Wielkopolski w XVII wieku*, Poznań 1977, pp. 12–14).

[96] K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, pp. 72–83.

[97] W. Uruszczak, *Historia państwa i prawa polskiego*, p. 156. For the characteristics of honey hunter communities, see K. Górski, *Prawo bartne w Polsce…*pp. 110 ff.

[98] Skrodzki, p. 8. The status as a legal entity of the (Masovian) honey hunter communities was previously noted by H. Wajs (*Bartnicy z Jabłonny i ich "prawo bartne"…*, p. 70).

[99] Skrodzki, p. 8, art. 3, 79, 80, 81.

[100] As a source of law, I broadly view the abstract act of creation (the conventional action of a particular authority), as well as the kind of "products" of these actions together with examples. Cf. W. Bossy, *Zwyczaj*

ties which in the late medieval and in the modern legal, political and social system of pre-1795 Poland were recognized as entitled to enact laws.[101] The genetically first lawmaker was the monarch – he granted privileges, enacted statutes and other normative acts (edicts, decrees, ordinances, universal acts, etc.). In the later period, the role of the main legislative body of the state was assumed by the Sejm, which fulfilled this role by approving laws, most of which took the form of so-called constitutions. The king did not lose his legislative powers entirely, though.[102] Moreover, there was also particular legislation, where primacy belonged to local assemblies (sejmiks), and over time, the Confederation. Law was also made by ministers and officials: marshals, hetmans, voivodes, or captains. Lawmakers as well were landowners, who as part of their domanial power established legal norms for their subjects, residents of villages and towns.[103] It is essential to indicate those legislative bodies which produced norms in the area of honey hunting law.

2.3.1. Honey hunting law *sensu largo*

2.3.1.1. Royal legislation

Within the area of law-making by the ruler, one should make a distinction between statutory law as part of the powers of *imperium* and *dominium*. In this section, only the monarch's legislative power exercised in the area of public power (*imperium*) will be discussed.

One of the oldest legislative acts made by a Polish monarch was the privilege of immunity.[104] Its fundamental aim was to waive public law, and thus constituted *ius singulare*.[105] The privileges were granted as part of public power – they released the recipient from bearing the burdens of *ius ducale* on behalf of the prince while at the same time transferring the right to collect these to the owner of the property.[106] Often these were as-

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i prawo zwyczajowe jako "źródła prawa", "Acta Universitatis Wratislaviensis, Prawo", 150, Wrocław 1988, pp. 14–16. A recent attempt to systematise royal and sejm lawmaking in the Jagiellonian era based on legislation for royal cities was made by Maciej Mikuła. See *idem*, *Prawodawstwo króla i sejmu dla małopolskich miast królewskich (1386–1572)*, Kraków 2014, pp. 63–71; *idem*, *Typologia aktów prawnych dla miast w dobie jagiellońskiej – przydatność funkcjonalnego podziału aktów prawnych do badań nad kierunkami polityki królewskiej*, SDPPP 2013, vol. 16, pp. 41–57.

[101] See Z. Ziembiński, *Teoria prawa*, Warszawa–Poznań 1977, p. 77; S. Wronkowska, *Tworzenie prawa*, p. 181. For the sake of simplicity, ecclesiastical, municipal, and international law in force in pre-1795 Poland has been omitted.

[102] S. Kutrzeba, *Historja źródeł…*, vol. 1, Lwów 1925, p. 200; W. Uruszczak, *Sejm walny koronny…*, p. 130–138; *idem*, Sejm walny wszystkich państw naszych. *Sejm w Radomiu z 1505 roku i konstytucja* Nihil Novi, CPH 2005, no. 1, p. 18; *idem*, *Konstytucja* Nihil Novi *z 1505 r. i jej znaczenie…*, pp. 17–23; S. Salmonowicz, S. Grodziski, *Uwagi o królewskim ustawodawstwie. I: W Polsce XVI wieku; II. W epoce elekcyjnej* [in:] *Parlamentaryzm i prawodawstwo przez wieki*, ed. J. Malec, W. Uruszczak, Kraków 1999, pp. 151–160.

[103] W. Uruszczak, *Historia państwa i prawa polskiego*, pp. 74–82, 90, 157–165, 179–180, 183–184, 223–232, 234–239, 245–248.

[104] *Ibidem*, p. 74.

[105] *Idem*, Species privilegium sunt due, unum generale, aliud speciale. *Przywileje w dawnej Polsce*, SDPPP 2008, vol. 11, p. 19–20; M. Mikuła, *Prawodawstwo króla i sejmu…*, pp. 64 ff and subsequent references to literature in the field.

[106] J. Matuszewski, *Immunitet ekonomiczny…*, pp. 65–66, 159; Z. Wojciechowski, *Prawo rycerskie w Polsce przed Statutami Kazimierza Wielkiego*, Poznań 1928, pp. 80–81.

sociated with the grant, sale or exchange of landed estates.[107] The question of royal privileges of immunity were closely linked with the problem of the character of the honey harvesting *regale* (see above), and hence may doubtlessly count some royal privileges to honey hunting law *sensu largo*.

The king, through privileges, could free a private estate from the burden of the presence of royal honey hunters. This type of exemption was made by inclusion of a *cum mellificiis* clause in the document granting the land.[108] The monarch, in transferring ownership of his estate could also reserve the rights of the regale through an *exceptis mellificiis* notation.[109] If we accept, that in principle the right of use of beehives in a given estate was linked with the ownership of the land, then only a clause that would exclude honey harvesting (*exceptis mellificiis*) was a legislative act, because it was that which created the honey harvesting *regale*. This would lead to the recognition of statutory law (privilege) as the genetic source of the honey harvesting *regale*, which may have arisen in the manner described above not only in Masovia, but also in other regions of Poland.[110] In contrast, in the late medieval period, when Masovian courts had accepted the presumption the honey harvesting *regale* (also for family estates),[111] the *cum mellificiis* clause constituted a source of excluding property from the obligation to accept the presence of royal honey hunters. This would in consequence lead to recognition of the honey harvesting *regale* as in effect at the very foundation of customary law.[112]

The sovereign also granted privileges what allowed the use of beehives in royal forests (also in the form of ingress into the forests[113]) and confirmed or allowed exemption from honey tributes. These could be directed toward bondsmen on newly established royal villages[114] or to the owners of landed estates. Among legislative acts one may also include privileges allowing use of royal forests by subjects of others, because fundamentally the domanial ownership of the beehives there belonged to the sovereign. In the Grand Duchy of Lithuania, the privileges of the Grand Duke concerning ingress into

[107] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 8–9, 29.

[108] *Ibidem*, p. 29–30. K. Buczek argued otherwise (*Książęca ludność służebna…*, p. 81), where he associated the *cum mellificio* clause with the change of payee of honey tributes from the ruler to the landlord.

[109] E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, p. 33. Tymieniecki interpreted this clause differently, seeing its inclusion in a document granting an estate with as the same as the reservation for the monarch of the domanial ownership of beehives while transferring domanial ownership of the rest of the land, although he also recognised the clause (following P. Dąbkowski, *Prawo prywatne polskie*, vol. 2, pp. 223–224), as "a partial honey harvesting *regale*" (K. Tymieniecki, *Sądownictwo w sprawach kmiecych…*, pp. 70–71). Yet another interpretation of the clause (linked to honey tributes) was proposed by K. Buczek (*idem*, *Książęca ludność służebna…*, p. 81). Unfortunately, Ferenc-Szydełko did not refer to these researchers, which significantly reduced the value of her work.

[110] J. Rafacz, *Regale bartne na Mazowszu…*, pp. 7–11. A different interpretation is found in J. Senkowski, *Skarbowość Mazowsza…*, p. 82, who inferred the right of Masovian dukes to retain beehives from the (and thus genetically primary) honey harvesting *regale*.

[111] J. Rafacz, *Regale bartne na Mazowszu…*, pp. 9–10.

[112] See also the interesting discussion in M. Mikuła, *Prawodawstwo króla i sejmu…*, pp. 66–71.

[113] O. Hedemann, *Dzieje Puszczy Białowieskiej…*, p. 104–109. See also H. Łowmiański, *Wchody miast litewskich*, p. 145.

[114] This phenomenon was also described by M. Dobrowolska, *Osadnictwo puszczy sandomierskiej…*, pp. 17–18.

the forest prohibited felling honey trees in grand ducal forests.[115] Confirmation of or exemption from honey tributes as part of the what were known as *ius ducale*, on account of its public character, should not be regarded as part of honey hunting law.[116]

Provisions regarding honey hunting law were to be found in general privileges as well. In the privilege for Bielsk district in Podlachia (1501) issued by the Grand Duke Aleksander, one can find mentioned that the court with jurisdiction over *Rusin* (i.e. Orthodox) – a honey hunter taking a Polish landowner to court "over beehives" – would be the captain together with a judge and his deputy.[117] Moreover, the privilege outlined the right of landlords and honey hunters to broken honey trees, as well as the obligation to mark trees and the priority of evidence in cases of damage to honey trees.[118] The rights of captains can be found in the privileges for Drohiczyn district in Podlachia.[119] In 1535, the Masovian nobility received from King Sigismund I privileges abolishing the honey hunting *regale* for all of Masovia; in that same year, however, this was withdrawn.[120] The addressee and the content of these norms, and simultaneously its general character, allow it to be classified as part of honey hunting law *sensu largo*.

The content of royal legislation can also be found in writs of mandate. One should not forget, however, as Maciej Mikuła has emphasised, that a writ of mandate *per se* was not an act of legislation, but an executive or interventionary one. Executive writs of mandate were "directed above all at officials and occasionally contained a summary of the main regulations that were to be enforced".[121] Thus they (as documents) can be regarded as a source of knowledge about statutory law enacted by the monarch. In several of these, one can find instructions regarding the honey harvesting *regale*. Their goal was to strengthen the enforcement of statutory law set forth by the authorities, and so they

[115] H. Łowmiański, *Wchody miast litewskich*, p. 93. Following Łowmiański one could mention here privileges for Minsk (1499), Polotsk (1510 – confirmation), Novogrod (1511).

[116] See the discussion regarding honey tributes.

[117] This was an exception to the rule that the court with jurisdiction over Poles sued by an Orthodox claimant was a judge and his deputy. This was associated with the partial introduction of Polish law into the western areas of Podlachia (Drohiczyn and Bielsk districts) (J. Śliwiński, *Tło nasilenia sporów o majętności na Litwie* [in:] A. Kołodziejczyk, K. Łożyński, J. Śliwiński, *Zarys konfliktów o dobra na Podlasiu i Grodzieńszczyźnie za Zygmunta I Starego. Wybór źródeł z „Metryki Litewskiej" z I połowy XVI wieku*, Olsztyn 2001, p. 15). See: *Nadanie ziemi bielskiey praw ziemi drohickiey roku 1501, art. 6* [in:] *Zbior praw litewskich od roku 1389 do roku 1529 tudzież rozprawy sejmowe o tychże prawach od roku 1544 do roku 1563*, ed. A.T. Działyński, Poznań 1841, p. 85.

[118] A landowner was entitled to priority of evidence (a clearing oath) if an Orthodox claimant filed a claim for damages against them. If it was, however, the third such charge, clearance by oath was no longer possible and the noble was subject to a monetary fine. The court with jurisdiction was a judge with his deputy (that is, a circuit court). *Nadanie ziemi bielskiey praw ziemi drohickiey roku 1501,* art. 11 [in:] *Zbior praw litewskich…*, pp. 86–88. See also A. Jabłonowski, *Podlasie…*, pp. 156–160; E. Wroczyńska, *Eksploatacja lasów na Podlasiu…*, pp. 156–157.

[119] *Ponowienie nadania praw polskich ziemi drohickiej roku 1516* [in:] *Zbior praw litewskich…*, p. 120. See also *Sądy starościńskie w ziemi drohickiej 1511* [in:] *Zbior praw litewskich…*, p. 117. In Pietkiewicz's view, the privilege for Drohiczyn district was granted by Grand Duke Alexander prior to 14.04.1496. The author assumed that the texts for the first privilege for Drohiczyn district and for Bielsk district are identical. K. Pietkiewicz, *Wielkie Księstwo Litewskie pod rządami Aleksandra Jagiellończyka. Studia nad dziejami państwa i społeczeństwa na przełomie XV i XVI wieku*, Poznań 1995, pp. 69–71. See also E. Wroczyńska, *Eksploatacja lasów na Podlasiu…*, p. 157.

[120] J. Rafacz, *Regale bartne na Mazowszu…*, p. 64.

[121] M. Mikuła, *Prawodawstwo króla i sejmu*, pp. 68–70; *idem*, *Typologia aktów prawnych dla miast w dobie jagiellońskiej…*, p. 55.

did not in and of themselves constitute a new law. By way of such an instruction given to the captain of Warsaw, King Sigismund I in 1533 ordered that disputes regarding the honey hunting *regale* be placed under the jurisdiction of the captain courts, lent priority of evidence to honey hunters (i.e. plaintiffs) in disputes over them not being given access to beehives and established, that appeals in cases regarding the honey harvesting *regale* was the royal court or the commissioner's court.[122] In 1535, the king first freed the Masovian nobility from the burden of the honey harvesting *regale*, only to reverse that act the same year, and in the writ of mandate to Masovian captains to retain the established rule of the jurisdiction of royal courts over royal honey hunters.[123] An example of an act of intervention on the other hand was the writ of mandate by Duchess Anna of Masovia to the courts in Wizna district.[124] Taking into account the association of these norms with the institution of the honey harvesting *regale*, one may count these as part of honey hunting law only as broadly understood (*sensu largo*).

Regulations regarding honey harvesting can also be found in royal statutes, which constituted, next to customary law, the main source of *ius commune* in late medieval Poland.[125] Consequently, these regulations can be regarded as also belonging to honey hunting law, however in a broad understanding of this concept. An example of this may be the precedent found in the Statute of Greater Poland of Casimir the Great: *Item Petrus Iohannem traxit*. This established, as a general principle, the priority of evidence (with witnesses) for a plaintiff in the case concerning theft. However, in the case of his inability to provide such evidence, the possibility of submission of a clearing oath was yielded to a defendant retaining his good name.[126] The case of theft of bees from a hive included in the regulation (*furtum apium vel mellificiorum*) was only the example of the established principle for court proceedings, in the view of Alojzy Winiarz based on the Statute of Lesser Poland (art. 28 Ms. Cz.).[127] One cannot thus regard this regulation as a norm of

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[122] Writ of mandate from Sigismund I to Jan Dzierzgowski, captain of Warsaw (Wilno, 14.10.1533), IMT 3, no. 334.

[123] Writ of mandate from Sigismund I to all captains in the Duchy of Masovia (Wąchock, 9.10.1535), IMT 3, no. 342; J. Rafacz, *Regale bartne na Mazowszu…*, pp. 64–65.

[124] Writ of mandate from Duchess Anna of Masovia to the Wizna circuit courts (Liw, 4.05.1513), IMT 2, no. 203.

[125] On the character of the statutes of Casimir the Great, see *Przedmowa* [in:] *Statuty Małopolskie*, p. XI; W. Uruszczak, *Sejm walny koronny…*, p. 131; *idem*, *Statuty Kazimierza Wielkiego jako źródło prawa polskiego*, SDPPP 1999, vol. 3, pp. 103–115; Cf. the comments by S. Roman, *Geneza statutów Kazimierza Wielkiego*, pp. 114–115, who doubted the official character of the entire Statute of Lesser Poland (*idem*, *Geneza Statutów Kazimierza Wielkiego…*, pp. 114–115).

[126] O. Balzer, *Studium nad tekstami łacińskimi objątku wiślickiego statutów Kazimierza Wielkiego* [in:] *Statuty Małopolskie*, pp. 25–27; R. Hube, *Prawo polskie w czternastym wieku. Ustawodawstwo Kazimierza Wielkiego*, Warszawa 1881, pp. 139–140; M. Handelsman, *Prawo karne w Statutach Kazimierza Wielkiego*, Warszawa 1909, p. 172.

[127] Regarding this character of the precedents, see A. Winiarz, *Prejudykaty w statutach Kazimierza Wielkiego*, KH 1895, pp. 198–208; S. Roman, *Geneza statutów Kazimierza Wielkiego*, pp. 96–108. Testifying to the appropriateness of this conclusion might be the inclusion of the provision in the Ms. Cz. of the Statutes of Lesser Poland, (and thus the most original of those containing precedents) under the rubric *De probacionibus* (AKP 2, p. 564; see also W. Uruszczak, *Z badań nad systematyką średniowiecznych pomników prawa polskiego*, ZN UJ 1982, Prace Prawnicze, vol. 97, pp. 16–26). In the systematic collection from the end of the 15th century this provision was included (already in the form of an abstract general principle, and not as a precedent) with the heading *De expurgacione pro furtu apium seu mellificorum* in the rubric *De expurgacionibus quibuslibet*, among regulations for court proceedings (*Najdawniejszy układ systematyczny prawa*

honey hunting law, even *sensu largo*. This precedent is found in the *Dygesta* of Statutes of Greater and Lesser Poland, and also entered into the first prints of Polish common law statutes (the *Syntagmata* from 1488) as was also considered in Łaski's Statute of 1506.[128]

In the Statute of Greater Poland penal norms protecting trees and beehives themselves were included, namely a fine of two *grzywnas* for felling a honey tree (*arborem cum apibus incidere*[129]), one for the owner who suffered damages and one for the court, which was reduced by half, if the tree had been only prepared for a hive (Art. 28). Destruction of three honey trees or theft of a beehive was punished with the severe *septuaginta* fine, or 14 *grzywnas* (Art. 32).[130] Both articles belonged to the original Statute of Greater Poland of Casimir the Great.[131] The first of these was found in the *Dygesta*, and also entered into the *Syntagmata* (1488) and Łaski's Statute (1506).[132] Art. 32 no longer appeared in the *Dygesta*, and also was not printed in the *Syntagmata*.[133] This was a result of the reform of the *septuaginta* fine introduced for Lesser Poland by the Statute of Wiślica, upon which later editions of the *Dygesta* of norms were based (Art. 23).[134]

The regulation regarding the obligation to pay honey tributes to the owner of a forest in which beehives were located contained one of the paragraphs of the Statute of Warta (1423).[135] This regulated the obligation of payment of honey tributes based on the ter-

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polskiego z końca XV w., ed. B. Ulanowski, AKP 5, p. 145; see also S. Rzonca, W. Uruszczak, *Najdawniejszy zbiór systematyczny prawa polskiego z końca XV w.*, CPH 1969, vol. 1, pp. 159–173). In the *Correctura iurium* from 1532 the provision was included under the rubric *De Furtis, Rapinis et Incendiariis*, but the tone of the regulation indicates, however, that the essence of the regulation is procedure for establishing proof in court proceedings (C. 762, see below).

[128] The *Dygesta* (Ms. SV from 1430): no. 31, under the rubric *De probacionibus* (AKP 2, pp. 389, 412–413); the *Syntagmata* (1488): *De illo qui accusatur de furto apium et mellificiorum* (*Syntagmata*, p. 78 [no. 34]). The precedent was also translated into Ruthenian (1423–1434) (*Ruski przekład polskich statutów ziemskich z rękopisu moskiewskiego*, ed. S. Roman, A. Vetulani, Wrocław–Kraków 1959, p. 71 [no. 35]). This regulation is also referred to in the notes to Art. 14, Ch. X of the Third Statute of Lithuania in the print from 1744 (*III Statut Litewski*, p. 314).

[129] Cf. an analogous regulation of the *Correctura iurium* (below).

[130] See R. Hube, *Prawo polskie w czternastym wieku…*, pp. 204, 206; M. Handelsman, *Prawo karne w Statutach…*, pp. 179, 180.

[131] S. Roman, *Geneza statutów Kazimierza Wielkiego*, p. 120.

[132] The *Dygesta* (Ms. SV from 1430): no. 126 under the rubric *De lignis seu utensilibus intra gades alterius inciderit(s)* (AKP 2, p. 438); the *Syntagmata* (1488): *De incidentibus siluas vel gaya vel borras alienas* (*Syntagmata*, p. 108 [no. 128]). The text was also translated into Ruthenian (1423–1434) (*Ruski przekład polskich statutów ziemskich*, p. 92 [no. 132]). It was also considered in the systematic collection from the end of the 15th century (under the rubric *De penis quibuslibet* [AKP 5, p. 167]). This regulation is also mentioned in the note to Art. 13, Ch. X of the Third Statute of Lithuania in the print from 1744 (*III Statut Litewski*, p. 314).

[133] *Statuty Wielkopolskie*, Art. XXXII (p. 40). This appeared for the last time in the Ms. B^2 from 1478 (a combined digest of the Statutes of Lesser and Greater Poland). Moreover, Art. XXXII can be found also in the codices containing the *Dygesta*, but this provision was found in parts apart from the *Dygesta*, consisting of regulations deriving from Statutes of Greater Poland excluded from the *Dygesta* (Ms. D^2, P^1). See L. Łysiak, *Wstęp* [in:] *Statuty Wielkopolskie*, p. X, note 25, pp. 128–129. Regulation of the *septuaginta* fine in the *Dygesta* was included in Art. 23 (Ms. SV), whereas in the print of the *Syntagmata* in Art. 26 (Sn^1).

[134] *Statuty Małopolskie*, Art. 4, pp. 259–263; S. Roman, *Geneza statutów Kazimierza Wielkiego*, pp. 167–169.

[135] More broadly about the genesis and character of the Statute of Warta, see W. Uruszczak, *Z badań nad statutem warckim z 1423 roku* [in:] *Parlamentaryzm i prawodawstwo przez wieki*, pp. 135–147. There one may find a list of earlier literature. See also *idem*, *Nowelizacje statutów Kazimierza Wielkiego w statucie warckim z 1423 roku. Z badań nad ustawodawstwem w dawnej Polsce*, SDPPP 2006, vol. 9, pt. 1, pp. 93–108;

ritoriality principle (i.e. to the owner of the forest). Wacław Uruszczak presumed that this fragment may have been the effect of noble demands made of the king at Warta.[136]

A significantly wider range of honey harvesting issues were regulated by the Janusz I the Duke of Masovia in the Statute of Warsaw (1401). Five articles of this statute were dedicated to the obligation to relinquish hives to the landowner in case of non-compliance with the requirements set in law (tributes).[137] This statute entered into the codification of Masovian law, in the so-called Goryński digest (1540).[138]

The abolition of payment of tributes in honey by "poor widows" pertained to the order of Konrad of Masovia from ca. 1231, but this regulation, on account of there being no link to honey harvesting, cannot be counted as part of honey hunting law.[139]

Regulations directly related to honey hunting can also be found in the Statutes of Lithuania. One may classify these, much as the norms discussed above, to honey hunting law *sensu largo*. These are discussed below on the basis of the regulations of the Second Statute of Lithuania (1566); possible differences in regard to the First and Third Statutes are indicated further.

Art. 3. (Ch. X) of the Second Statute of Lithuania regulated the manner in which beehives located on grand ducal properties or those belonging to other owners were used.[140] The right to use royal forests was linked with the institution of ingress into forests, which starting in the 16th century was subject to attempts at regulation in Lithuania in order to increase the revenues from grand ducal estates.[141] According to the law, on another's property, honey hunters could only use axes (*securis*)[142] and hive tools[143] (*sarculum*) and were permitted to harvest (*detrahere*) bast (*suber*) for cord-making (*funis*),[144] and covers (*cortex*)[145] for their own needs (*in usum mellificii pertinere*). Honey hunters were not allowed to use dogs, hunting-spears or firearms (*sine canibus,* […] *venabulis, bombardis,*

idem, *Rękopisy Statutu krakowsko-warckiego z 1421/1423 roku* [in:] Nil nisi veritas. *Księga dedykowana Profesorowi Jackowi Matuszewskiemu*, ed. M. Głuszak, D. Wiśniewska-Jóźwiak, Łódź 2016, pp. 99–114.

[136] W. Uruszczak, *Z badań nad statutem warckim z 1423 roku*, pp. 138–147.

[137] The Statute of Warsaw of Duke Janusz I regarding honey hunters and beehives (Warszawa, 24.04.1401), IMT 1, no. 55. The Polish translation by Maciej of Różan can be found in the Codex Świętosławów (1449), AKP 3, pp. 318–321.

[138] Statute of Janusz I Duke of Czersk, issued in Warsaw 24. April 1401, IMT 3, p. 241–243.

[139] Resolution of Duke Konrad of Masovia with his council regarding honey tributes from "poor widows" (ca. 1231), IMT 1, no. 3.

[140] In the print of the Third Statute of Lithuania (1744), a reference appears to the corresponding Art. 3 of the regulation of the Statute of Warta.

[141] On the evolution of that provision, see S. Godek, "*Nierównie skrupulatniejsze i szczegółów sięgające są prawa litewskie względem polowania. Duch jednakże tego prawodawstwa różny był w różnych czasach", czyli o niebezpieczeństwach łowów w cudzej puszczy*, "Prace Naukowe Uniwersytetu Śląskiego. Z Dziejów Prawa" 2014, vol. 7, pp. 16–31. See also J. Śliwiński, *Grodzieńszczyzna i Podlasie w XV–XVI w.…*, pp. 80–96, 168.

[142] Axes were used by honey hunters to cut hollows into trees, that is, openings for hives (T. Siudowska-Myzykowa, *Materiały do bartnictwa w północno-wschodniej Europie ze szczególnym uwzględnieniem obszaru Polski*, Wrocław 1960, p. 39).

[143] In Polish: *piesznia* – a specialised long-handled chisel which was used to widen openings for hives. *Ibidem*, pp. 39–40.

[144] In Polish: *leziwo* – one of the most important tools for a honey hunter. It was a single cord (made of hemp or bast fibre) tied at the ends, which was used for climbing trees. *Ibidem*, pp. 28–29.

[145] In other words, bark used to cover a beehive. *Słownik polszczyzny XVI wieku*, vol. 12, ed. H. Górska, L. Woronczakowa, Wrocław 1979, p. 602.

arcubus), which was to increase the efficacy of the ban on hunting. They could also not take wood from the forest. When there was a fallen tree with a beehive, the honey hunter only had the right to remove the part of the tree with the hive (*alveare*); the rest he was to leave for the owner of the forest. The rights of forest-owners were restricted: they could not refuse to allow a honey hunter to use their beehives (*adimere*), they could also not cut down honey trees (*alvearia et apiarias arbores excindere*). The destruction of a honey tree by anyone (regardless of whether bees were present or not), even if it had only been prepared for hollowing-out, was subject to compensation for damages. This also applied to the withering of a tree due to poor ploughing (*subarare*). Art. 13. listed specific types of destruction: felling (*arbores mellarias radicitus abradere, subruere, effodere, corrumpere*), and burning (*arbores mellarias amburere*).[146] These acts were subject to a fine outlined in the same Art. 13.[147]

Art. 6. of the Statute contained norms regarding the procedures in the case of disputes over hives and ingress into forests (*controversia de alveariis vel usu et ingressu silvarum*). The law ordered that the court should settle disputes according to honey tree markings (*signum*).[148]

These laws thus focused on regulating ingress, which consisted (mainly in grand ducal forests) the use of beehives.[149]

The Second Statute of Lithuania also contained penal regulations. Aside from the above-mentioned responsibility for the destruction of honey trees, Arts. 13 and 14 penalised the destruction of honey tree markings (*signa abolere et excidere*), burning trees with bees (*arborem cum apibus exurere*) – all that either furtively or deliberately (*furtim, data opera*) as well as theft of bees (*apum* [sic!] *evellere*).[150] The death penalty was imposed for setting fire to forests (*incendium relinquere*).[151] Moreover, honey hunters (*apiarii seu mellarii*) were entitled to a different rates of the wergeld – 20 *kopas* groschens (*viginti sexagenae*) (1200 groschens) in case of homicide and 2 *rubels* groschen (200 groschens) in case of injuries. For honey hunters' wives, the rates were double (*duplex*).[152] Moreover, Art. 6 ordered the death penalty (*poena capitis*) for a subject who alienated (*alienare*) a tree "outside of his lord's boundaries" (*extra domini sui ditionem*). The wood was to be returned to its proper owner (*restituere*).[153]

The majority of these laws were already considered in the First Statute of Lithuania (1529). In the text in Ruthenian, analogously to Art. 3, Ch. X, regulation of the use of

[146] Art. 3, 13, Ch. X, *II Statut Litewski*, pp. 185–187, 192. In the print of the Third Statue from 1744, Art. 13 contains a reference to the Statute of Greater Poland of Casimir the Great regarding the destruction of honey trees.

[147] Art. 13, Ch. X, *II Statut Litewski*, p. 192.

[148] Art. 6, Ch. X, *II Statut Litewski*, pp. 188–189.

[149] O. Hedemann, *Dzieje Puszczy Białowieskiej…*, pp. 102–125, 277–279; *idem*, *Dawne puszcze i wody*, pp. 136–137. Ingress into grand ducal forests were to be verified on the basis of the regulation of land measures (*ustawa na włóki*) from 1557 (*idem*, *Dzieje Puszczy Białowieskiej…*, pp. 106, 277). Non-royal honey hunter also used beehives on the basis of agreements concluded with owners (*ibidem*, pp. 278–279).

[150] Art. 13, 14, Ch. X, *II Statut Litewski*, pp. 192–193. In the print of the Third Statute of Lithuania from 1744, a reference appears to the precedent from the Statute of Casimir the Great regarding the theft of bees or honey discussed above.

[151] Art. 17, Ch. X, *II Statut Litewski*, p. 193.

[152] Art. 1, Ch. XII, *II Statut Litewski*, pp. 217–218.

[153] Art. 6, Ch. X, *II Statut Litewski*, pp. 188–189.

beehives on others' properties was placed in Art. 3, Ch. IX;[154] similarly, Arts. 6, 13, 14, Ch. IX to Arts. 6, 13, 14, Ch. X of the Second Statute and Art. 1, Ch. XI to Art. 1, Ch. XII of the Second Statute. In the Latin translation of the First Statute, the regulations were found respectively in cap. 3 (= Art. 3 of the Second Statute), cap. 5 (= Art. 6 of the Second Statute), and cap. 11 (= Art. 13 and 14 of the Second Statute) of Chapter IX and cap. 1 of Chapter XI (= Art. 1, Ch. XII of the Second Statute). In the Polish translation these were Arts. 3 and 4 (= Art. 3 of the Second Statute), Art. 7 (= Art. 6 of the Second Statute) and Arts. 14, 15, 16 and 17 (= Art. 13 and 14 of the Second Statute), Chapter IX, as well as Art. 1, Chapter XI (= Art. 1, Ch. XII of the Second Statute).[155] The penalty was less severe for the destruction of a honey tree (Art. 13, Ch. IX). The First Statute did not contain a law concerning punishment for setting fire to a forest (Art. 17, Ch. X of the Second Statute). The homicide wergeld for honey hunters, however, was 8 *rubels* groschen (800 groschen) and injuries wergeld one *rubel* groschen (100 groschen).

In the Third Statute of Lithuania (1588) all of these regulations from 1566 were retained with insubstantial changes. In 1744, the homicide wergeld for a honey hunter had become 40 *kopas* groschen (2400 groschen), injuries wergeld remained unchanged (2 *rubel*s groschen, 200 groschen).[156] The penalty was also reduced for alienating a honey tree outside of the demesne – a lord was to punish his subject "according to the severity of the offence".[157]

The legislative role in the area of honey hunting law *sensu largo* could be played also by decisions of the royal courts.[158] As regards honey hunting they usually referred to the honey harvesting *regale*. One example might be the royal decree of 7 January 1507, in which King Sigismund I gave his consent to the purchase by Wizna district nobles of the beehives located on their estates from local honey hunters. As Józef Rafacz emphasised, this decree was based on a previous precedent of a decision of the Sejm court of 1505, which forbade honey hunters the use of the hives in the village of Pruskiestany in Wizna district and ordered the purchase of those hives by the owner of the estate.[159]

The royal referendaries' court could verify in its decree (and also change, which had a law-making character) the tributes of the subjects living in the royal demesne which could be associated with beekeeping. If a given obligation (mostly tributes paid in honey) were borne by "common" subjects (thus those not in associations of vocational honey hunters), one can speak of the creation by the royal referendaries' court of honey hunting law *sensu largo* (see the above discussion of tributes in honey).

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[154] A prohibition on entry into forests with dogs and firearms was also found in the law regarding land measures (*ustawa na włóki*) from 1557 (Art. 32).

[155] Art. 3, 6, 13, 14 Ch. IX, Art. 1, Ch. XI, *Statut ziemski od Zygmunta I roku 1529. Litwie nadany* [in:] *Zbior praw litewskich*…, pp. 328–332, 333–334, 339–340, 352–353. In Ruthenian, see Первый Литовский Статут (1529 г.) [*Pervyj Litovskij Statut (1529 g.)*], ed. С. Лазутка, И. Валиконите, З. Гудавичюс [S. Lazutka, I. Valikonitė, E. Gudavičus], Вильнюс [Vilnius] 2004, pp. 218–221, 223, 230. See also in Ruthenian, Polish and Latin edition, *Pirmasis Lietuvos Statutas. Tekstai senąja baltarusių, lotynų ir senąja lenkų kalbomis*, ed. S. Lazutka, I. Valikonytė, E. Gudavičius, vol. II, pt. 1, Vilnius 1991, pp. 244–251, 254–255, 268–269.

[156] *III Statut Litewski*, Art. 3, Ch. XII, p. 372.

[157] *III Statut Litewski*, Art. 6, Ch. X, p. 311.

[158] M. Mikuła, *Prawodawstwo króla i sejmu*…, pp. 68–69; *idem*, *Typologia aktów prawnych dla miast w dobie jagiellońskiej*…, p. 51.

[159] J. Rafacz, *Regale bartne na Mazowszu*…, p. 62.

2.3.1.2. *Local assembly (**sejmik**) legislation*

Provisions regarding the honey harvesting *regale* were made also by the nobility at their gatherings. After the incorporation of Wizna district to the Kingdom of Poland (1495), the local assembly of Greater Poland in Koło passed a resolution (1502), in which on account of this incorporation decided *ut mellificia libera habeant* [*nobiles Viznenses* – KG] *in eorum hereditatibus, prout hic in regno Poloniae*.[160] Execution of this resolution was possible owing to the later agreement of the Wizna nobility with honey hunters (2 June 1506) made at the Wizna local assembly, the subject of which was the purchase of hives located on noble estates. It was already approved on 16 June 1506 by the royal court and confirmed by the king at the beginning of 1507.[161] On the other hand, likely in 1525 the Masovian assembly passed a resolution (of which more is not known) regarding the right of Masovian nobles to purchase beehives on their estates.[162] The close link with the honey harvesting *regale* allows such norms to be regarded as honey hunting law *sensu largo*.

2.3.1.3. *Sejm legislation*

At the Piotrków Sejm of 1538, constitutions (i.e. laws) were passed for the incorporated Masovian districts.[163] One of these, *De mellicidiis*,[164] modified the rules for the exploitation
of beehives by royal honey hunters: these were forbidden to exploit beehives located on private estates.[165] At the same time, non-royal honey hunters with hives in royal forests

[160] Settlement of a conflict between the captain of Wizna and the entire Wizna nobility (Koło *in conventione*, 29.04.1502), IMT 2, no. 165.

[161] Agreement between the nobility and the honey hunters of Wizna district (Przytuły *in conventione particulari*, 2.06.1506), IMT 2, no. 181; Confirmation of the agreement of the nobility of Wizna district with the honey hunters (Kraków, 23.02.1507), IMT 2, nos. 182, 183, 184; J. Rafacz, *Regale bartne na Mazowszu…*, pp. 61–62. After the return of this land to the Duchy of Masovia (1511), thanks to the support of Duchess Anna of Masovia, ducal honey hunters tried to return to use of beehives on private estates, which met with the resistance of the nobility. The final abolition of the honey harvesting *regale* in Wizna district was established by royal decree in 1519. *Ibidem*, p. 63.

[162] *Ibidem*, pp. 63–64.

[163] These were neither, as E. Ferenc-Szydełko provides, an "act issued by Sigismund I" nor his "statute" (cf. *eadem*, *Organizacja i funkcjonowanie bartnictwa…*, pp. 10, 34, 116), but a constitution (i.e. a law) of the general Sejm (W. Uruszczak, *Sejm walny koronny…*, p. 215; J. Choińska-Mika, *Mazowiecki parlamentaryzm XVI–XVIII wieku* [in:] *Dzieje Mazowsza. Lata 1527–1794*, vol. 2, ed. J. Tyszkiewicz, Pułtusk 2015, pp. 124–125). The author may have been led astray by the title adopted in the edition *Volumina Legum* (i.e. *Constitutiones per Sacram Regiam Maiestatem in conventione generali Petricoviensi pro Ducatu Masoviae factae*) – VL, vol. I, ed. J. Ohryzko, Petersburg 1859, p. 263; See also IMT 3, no. 354. However, the title included in *Matricularum Regni Poloniae Summaria* (i.e. *Constitutiones ducatus Masoviae editae in conventu generali Petricoviensi*) is not as unambiguous as was adopted in VL (see VC, pt. I, vol. 2: *1527–1549*, ed. W. Uruszczak, S. Grodziski, I. Dwornicka, Warszawa 2000, p. 177, especially note a-a; cf. *Matricularum Regni Poloniae Summaria*, pt. IV, vol. 3, ed. T. Wierzbowski, no. 19045, p. 83 – cited after VC).

[164] In VL – *De mellificiis* (IMT 3, no. 354, note c).

[165] It has been accepted to regard this regulation as referring to the abolition of honey harvesting *regale* in Masovia, see E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 34–35; J. Rafacz, *Regale bartne na Mazowszu…*, pp. 65–66.

were ordered to pay the appropriate tributes.[166] The constitution was an intervention of the Sejm into an area that previously had been regulated by the monarch independently, which was after all the intent of the Masovians. Already in 1535, it was the king who granted the Masovian nobility in Parczew the privilege to lift the honey harvesting *regale*, and later abolished it.[167] Although in the first half of the 16th century it did occur that the king might initiate legislation in the Sejm in matters that belonged to his prerogatives,[168] this did not apply, however, to the above-mentioned constitution for Masovia: it was the nobility that led to the passage of this constitution.

At the Piotrków Sejm of 1550, Sigismund II Augustus solemnly confirmed the laws. Thereby he ordered his subjects not to touch noble property, in particular through using beehives on private estates bordering on the Crown demesne. This prohibition was associated with the demarcation of royal from noble estates, and cannot, in my opinion, be seen as an effect of Sejm legislation (as E. Ferenc-Szydełko seemed to argue).[169]

Regardless of the classification of both acts, of the whole it can be said with certainty that it was not linked with specific honey hunting communities and can be regarded as honey hunting law only in the broad sense.[170]

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[166] VC, pt. I, vol. 2, p. 177; Constitution of the Duchy of Masovia, IMT 3, nr 354. This was a regulation in accordance with the Statute of Warta (1423). See also E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, p. 35.

[167] J. Rafacz, *Regale bartne na Mazowszu…*, pp. 64–65.

[168] W. Uruszczak, *Sejm walny koronny…*, p. 136.

[169] VC, pt. II, vol. 1: *1550–1585*, ed. S. Grodziski, I. Dwornicka, W. Uruszczak, Warszawa 2005, p. 27 (point 44). One cannot concur with E. Ferenc-Szydełko, who regarded this regulation as a "Sejm law" (cf. *eadem*, *Organizacja i funkcjonowanie bartnictwa…*, p. 33; or alternately, *ibidem*, p. 116). The solemn confirmation of the laws by Sigismund II Augustus was an effect of the submission of petitions *ad exequendum* at the Sejm of 1550. Among the postulates of the nobility published by J. Szujski, there is none referring to the demarcation of estates (cf. *Dyaryusze sejmów koronnych 1548, 1553, 1570 r.*, ed. J. Szujski, SRP 1, Cracoviae 1872, pp. 38–48), one such can only be found in articles by the representatives of the nobility edited and published by K. Lanckorońska (*Elementa ad fontium editiones*, vol. XXXIX, ed. C. Lanckorońska, Romae 1976, pp. 36–44 [no. 1235], pp. 49–67 [no. 1245 – the king's response]); see also on the confirmation A. Sucheni-Grabowska, *Monarchia dwu ostatnich Jagiellonów a ruch egzekucyjny*. Pt. 1: *Geneza egzekucji dóbr*, Wrocław–Warszawa–Kraków–Gdańsk 1974, pp. 143–146; *eadem*, *Zygmunt August. Król polski i wielki książę litewski 1520–1562*, Kraków 2010, pp. 320–334.

[170] It is accepted that it was indeed with the act of 1550 that the king expanded the abolition of the honey harvesting *regale* in Masovia (1538) to the entire country (cf. E. Ferenc-Szydełko, *Organizacja i funkcjonowanie bartnictwa…*, pp. 33, 116). It is essential to pose the question whether the honey harvesting *regale* in the Crown (insofar as it existed) may have been abolished earlier, possibly as a result of the introduction of the demarcation of royal from private estates (see e.g. the constitution *De limitibus bonorum hereditatorium cum regalibus* of 1538 and the earlier acts discussed by M. Podgórska, *Postępowanie w sprawie granic między dobrami królewskimi a dobrami szlacheckimi w świetle prawa stanowionego do 1523 roku*, SDPPP 2007, vol. 10, pp. 33–41). It is worth highlighting that among the nobles' postulates from 1550 one can find a request "that captains, if they have committed any injury or infringement at the borders, that after the boundaries are set the captain be held responsible for compensation to the noble whose rights have been infringed upon" (*Elementa ad fontium editiones*, vol. XXXIX, p. 42 [no. 1235]). In response to the nobles' postulates, prior to the confirmation of the laws Sigismund II Augustus said that "around the boundaries there are statutes, that in his power HRM shall discard, and among them those which I order retained" (*ibidem*, p. 64 [no. 1245] [point 55]). The mentions provided by E. Ferenc-Szydełko from the second half of the 16th century regarding the limitation of access to beehives by the nobility only prove that royal subjects violated the prohibition on using beehives on noble estates in this period (cf. *eadem*, *Organizacja i funkcjonowanie bartnictwa…*, pp. 33, 116). The *terminus a quo* of this prohibition, or the time at which the honey harvesting *regale* was abolished, remains a question to be clarified and certainly deserves a separate study. In particular

The result of the bearing of the legislative burden by the Sejm in the 16th century was, among other things, the attempt to pass the *Correctura iurium*. According to the assumptions of the authors, it was to constitute a comprehensive collection of legal norms that would apply to all inhabitants of the Kingdom.[171] Among the regulations contained within the draft there were also two penal norms belonging to honey hunting law (*sensu largo*). A fine of two *grzywnas* (one for the injured party, and one for the court) was imposed for felling a tree with a beehive (*arborem cum apibus succidere*), whereas half a *grzywna* each for the injured party and the court was to be paid if the tree was prepared for hive (*sine apibus tamen ad apes aptatam arborem succidere*).[172] The *Correctura iurium* also specified how to proceed in the case of an accusation of theft of honey or bees.[173] The regulation regarding the destruction of trees was based on an analogous regulation in the Statutes of Casimir the Great, subjected to modification in terms of style.[174] Similarly retained without substantive changes was the regulation regarding the crime of theft of honey and bees, although the precedential form (which was still present in the *Syntagmata*) was given up in favour of abstract general norms.[175] This did not constitute a regulation of a *lex specialis* character in relation to the normal procedures of evidence in cases of theft.[176] As mentioned above, both regulations were present in the first prints of the Statutes of Casimir the Great, including the Łaski's Statute (1506), and so it is not surprising that they are also repeated in the codex. A passage regulating the rules for use of the forest was also considered in the *Correctura iurium*, although its content was modified.[177]

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attention should be paid to the text of the Statute of Warta (the obligation to pay tributes to the forest owner) or the resolution of the sejmik of Koło of 1502 (abolishing the honey harvesting *regale* on noble estates in Wizna land *prout hic in regno Polonie* [emphasis – KG] – see above). One may state without doubt, however, that among the (known) nobles' postulates submitted at the Sejm of Piotrków in 1550, there was no request *expressis verbis* suggesting the abolition of the honey harvesting *regale*.

[171] W. Uruszczak, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.*, Warszawa 1979, pp. 220–223; *idem*, *Korektura praw z 1532 roku. Studium historycznoprawne*, vol. 1, Warszawa 1990, p. 61.

[172] *Correctura statutorum consuetudinum Regni Poloniae*, SPPP 3, ed. M. Bobrzyński, Kraków 1874, p. 184 (C. 747). Cf. W. Uruszczak, *Korektura praw…*, vol. 2, Warszawa 1991, p. 106.

[173] *Correctura statutorum…*, p. 188 (C. 762). See W. Uruszczak, *Korektura praw…*, vol. 2, p. 102.

[174] Cf. W. Uruszczak, *Korektura praw…*, vol. 1, p. 264. Compared to the *Syntagmata* print, divergent is only the final part of the passage (*legitime convictus, solvere debet*). It does not substantively change the content of this law.

[175] This law was placed in Title XI: *De Furtis, Rapinis et Incendiariis*, yet it was not strictly a penal norm, as it regulated (unchanged) the question of plaintiff's evidence of witnesses as well as a clearing oath for the accused. See W. Uruszczak, *Korektura praw…*, vol. 1, p. 265.

[176] Cf. *Correctura statutorum*, C. 762 and 763, pp. 188–189: *Quod et in aliis rebus furto ablatis uniformiter volumus observari* […] (C. 763). Thus, as a rule in cases of an accusation of theft evidence from witnesses was necessary (unless the stolen item was found, or the perpetrator was caught *in actu furandi*). If the plaintiff could not present such evidence, the defendant had the right to submit a clearing oath (*iuramentum corporale*) (unless he did not have a good reputation). See also W. Uruszczak, *Korektura praw…*, vol. 1, pp. 144–145, vol. 2, pp. 102–103.

[177] *Correctura statutorum*, C. 333, p. 89: *Quod si unus colonus apud duos vel plures dominos possideat apes, prata, agros, silvas et alia id genus, licet colonus ille domicilium habeat in villa unius domini, pro debitis suis et iniuriis contra eos commissis per detentionem talis coloni in fundo suo aut per arrestum proventuum eidem colono ex fundo suo provenientium, requisito domicilii domino, sibi iustitiam ministrare debebit, quae robur habebit perpetuae firmitatis*. See also W. Uruszczak, *Korektura praw…*, vol. 1, p. 211.

Missing in the draft were provisions known in the Statute of Greater Poland of Casimir the Great (destruction of three honey trees or theft of beehives). This is understandable, as this law was no longer present in editions of the *Dygesta*.

2.3.1.4. Domanial legislation[178]

Land owners had the right to establish the law on their estates. So-called rural law regulated the legal relations between a lord and his subjects, the law in force on estates and internal organisation.[179] The literature to date has included ordinances for honey hunters to the rural law, among other village laws (see below).[180]

The main form of domanial legislation were village laws or statutes (in Polish also: *wilkierz*), i.e. normative acts issued by the owners or administrators of estates. Sometimes they were called "privileges". As a rule, they regulated questions having to do with the interests of the landlord (service and emigration of subjects, the turnover of peasant land, etc.), and also contained penal provisions and those regarding everyday life, as well as regulations for the organisation and functioning of the village community (*gromada*).[181] Sometimes they took the form of economic instructions.[182]

Among the provisions of the rural law one could also find those whose aim was to protect the estate's forests (from fire and excessive logging[183]). As a rule, they penalised reprehensible behaviour and determined the organisation and functioning of the administration of the estate's forest.[184] They thus referred (although not always *expressis verbis*) also to those who worked in honey harvesting, in which sometimes the obligations

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[178] In this work, I make no distinction between law-making by hereditary estate owners and those holding estates on the basis of other titles (including the captains of royal estates). In the area of making domanial law, their powers were not so different as to alter these characteristics (J. Łosowski, *Dokumentacja w życiu chłopów w okresie staropolskim. Studium z dziejów kultury*, Lublin 2013, p. 50).

[179] S. Płaza, *Historia prawa w Polsce…*, pt. 1, pp. 158–159; *idem*, *Źródła drukowane do dziejów wsi w dawnej Polsce. Studium bibliograficzno-źródłowe*, Warszawa–Kraków 1974, pp. 127–128; J. Rafacz, *Ustrój wsi samorządnej*, pp. 44–61. On village self-government, see also Z. Ćwiek, *Z dziejów wsi koronnej XVII wieku*, Warszawa 1966, pp. 83–111.

[180] See S. Płaza, *Historia prawa w Polsce…*, pt. 1, pp. 159–160; *idem*, *Źródła drukowane do dziejów wsi…*, pp. 127–133.

[181] S. Kutrzeba, *Historja źródeł…*, vol. 2, pp. 323–332; J. Łosowski, *Dokumentacja w życiu chłopów…*, pp. 169–195, 206–212; L. Łysiak, *Prawo i zwyczaj…*, pp. 13–14.

[182] The normative quality and character "close to that of village law" of the economic instructions was pointed out by S. Kutrzeba, *Historja źródeł…*, vol. 2, p. 329.

[183] J. Łosowski, *Dokumentacja w życiu chłopów…*, pp. 178–179, 212–218. On the burning of estate forests by peasants with the aim of increasing the area under cultivation, see e.g. J. Broda, *Gospodarka leśna w dobrach żywieckich do końca XVIII w.*, Warszawa 1956, pp. 89–103. Paradoxically, punishment for careless actions with fire applied also to honey hunters, who (especially in the 17th and 18th centuries) burnt forested areas themselves. This increasingly had to do with honey hunters also dabbling in farming (M. Kargul, *Abyście w puszczach naszych…*, pp. 133–134; K. Ślaski, *Osadnictwo w puszczach województwa pomorskiego w XV–XVIII wieku*, KHKM 1963, vol. 11, no. 2, pp. 236–237, 244). The clearing of estate forests was not only linked with what was needed for construction and fuel for peasants or the wood trade. Tree stands were cleared for the production of tar, potash, charcoal, or as fuel for smelters operating in the forest.

[184] R. Łaszewski, *Wiejskie prawo karne w Polsce XVII i XVIII wieku*, Toruń 1988, pp. 111–114. See e.g. J. Broda, *Gospodarka leśna w dobrach żywieckich…*, pp. 103–124.

related to forest service were touched upon.[185] One example is the village law from the captainship of Tuchola of 1749, based on an analogous regulation of 1643,[186] which prohibited the cutting of trees "without the permission of the honey hunters and the foresters" violation of which was subject to a monetary fine and imprisonment. Honey hunters were given the responsibility of ensuring the prohibition was respected, subject to the same penalty.[187] An analogous passage can be found also in the instructions to officials.[188]

Similar articles can be found in 16th century laws for grand ducal estates issued by the last monarchs of the Jagiellonian dynasty. They in fact had a general character but were issued as part of the domanial powers of the grand duke. These were the economic law (*ustawa ekonomiczna* from 1529),[189] the law on land measures (*ustawa na włóki* from 1557)[190] as well as the forest law (*ustawa leśna* from 1567) of Sigismund II Augustus.[191] Under the latter, honey hunters were subordinated to a royal forester, who collected their tributes and looked after the development of honey harvesting. This "system" was confirmed by the broad review of forestry conducted between 1636–1641.[192] All of these

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[185] Michał Kargul for the Pomerania voivodeship has even advanced the thesis that before a separate forest administration was called into being, this role was fulfilled by honey hunters (*idem, Abyście w puszczach naszych…*, pp. 98–102, 112, 243). They were charged with such responsibilities still in the first half of the 18th century (*ibidem*, p. 106). On the forest service as a privileged group in village society, see Z. Ćwiek, *Z dziejów wsi koronnej…*, pp. 125–126.

[186] *Michała Antoniego Sapiehy wilkierz dla starostwa tucholskiego* [in:] *Polskie ustawy wiejskie XV–XVIII w.*, ed. S. Kutrzeba, A. Mańkowski, AKP 11, p. 318.

[187] *Ibidem*, Art. 59.

[188] As an example, see the instructions for the officials of Radziwiłłs of Birże quoted in U. Augustyniak, *Dwór i klientela Krzysztofa Radziwiłła (1585–1640). Mechanizmy patronatu*, Warszawa 2001, p. 56, in which Krzysztof Radziwiłł ordered the protection of trees suitable for the placement of beehives.

[189] *Ustawa ekonomiczna dla Litwy z roku 1529* [in:] *Zbior praw litewskich…*, pp. 126–131, esp. art. XIV, XV, XXVI.

[190] The text of the law on land measures (as well as its reform) was published in J. Jaroszewicz, *Obraz Litwy pod względem jej cywilizacyi od czasów najdawniejszych do końca wieku XVIII*, Wilno 1844, pp. 229–276. On the land measures reform in the Grand Duchy of Lithuania and of later editions of the source, see J. Ochmański, *Reforma włóczna na Litwie i Białorusi w XVI w.* [in:] *Dawna Litwa. Studia historyczne*, Olsztyn 1986, pp. 158–174. The researcher pointed first and foremost to the Russian publisher Русская Историческая библотека [Russkaja Istoriczeskaja Bibliotieka], т. 30, Юрьевъ [Jurjew] 1914, col. 539–590 (see *ibidem*, p. 165, note 53). See also A. Żabko-Potopowicz, *Lasy wielkoksiążęce za Zygmunta Augusta i ich gospodarze* [in:] *Twórcy i organizatorzy leśnictwa polskiego na tle jego rozwoju*, ed. A. Żabko-Potopowicz, Warszawa 1974, pp. 25–26.

[191] The forest law was modelled on an analogous regulation for the captainship of Knyszyn (S. Godek, *"Nierównie skrupulatniejsze…*, p. 27). The text was published in O. Hedemann, *Ustawa leśna 1567 r.*, "Echa Leśne" 1936, no. 4, pp. 3–4. A law for foresters was only perfunctorily discussed (despite the title) in M. Taradejna, *"Ustawa leśniczem" króla Zygmunta Augusta, uchwalona w 1568 roku w Knyszynie* [in:] *Las w kulturze polskiej*, vol. 1, ed. W. Łysiak, Poznań 2000, pp. 62–64; more broadly see O. Hedemann, *Dzieje Puszczy Białowieskiej…*, pp. 210–211. For grand ducal forests, similar acts were issued earlier (1529, 1557). See *ibidem*, pp. 173–177, 211, 214–218. See also A. Żabko-Potopowicz, *Lasy wielkoksiążęce za Zygmunta Augusta i ich gospodarze*, pp. 26–27.

[192] Ординація Королевскихъ Пущъ въ лѣничествахъ бываго Великаго Княжества Литовскаго [*Ordinacija Korolewskich Puszcz w lesniczestwach bywszago Wielikago Knjażestwa Litowskago*], Я.Ф. Головацкій [ed. J.F. Golowackij], Вилна [Wilna] 1871; O. Hedemann, *Dzieje Puszczy Białowieskiej…*, pp. 177, 211. Although called "ordinances", these acts were in fact a review of grand ducal forestry, in which fragments are found describing the obligations of foresters, gamekeepers, fusiliers, and ordinary subjects. For more, see below.

acts regulated the rights of honey hunters to use the forests and their resultant tax obligations.[193]

In some village laws one can also find provisions regarding contributions made to a lord. One example was the regulations of the bishop of Krakow for the Muszyna episcopal demesne from 1647, in which there was an order for the payment of a "honey fee"[194] or the laws for Merecz near Vilnius (1769/1771).[195] It did occur that such laws, if they were issued by royal captains, were then confirmed by the monarch.[196]

Some village laws, which were directed at subjects in general, also contained regulations addressing honey hunters or protecting the goods that were important for the vocation.[197] These also regulated the question of so-called "robber bees" (*Raubbienen*).[198]

The way in which the forest was used by subjects could also be regulated by an act of division (*divisio bonorum*) among the heirs to family estates, especially if these remained in condominium.[199] An example of such a document might be the so-called ordinance for the Pileckis' estate of 1478, which Dąbkowski (inaccurately) described as "the oldest Polish honey harvesting ordinance".[200]

Although they were established as part of domanial power (*dominium*), none of these norms discussed were directly addressed to specific honey hunting communities. For this reason, they may be counted among honey hunting law only in the broad sense (*sensu largo*).

2.3.2. Honey hunting law ***sensu stricto*** (particular law)

Honey hunter communities did not govern themselves only using the customary law discussed above. Over time they more frequently governed themselves also using codified law. Thus, one may identify a range of acts addressed directly and exclusively to honey hunters or their organisations,[201] which along with customary law, constituted particular honey hunting law. As a rule, those acts were dedicated to honey harvesting. Some of

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[193] *Ibidem*, pp. 105–106, 113–115; A. Gryguć, *Użytkowanie puszcz królewskich…*, pp. 119–122.

[194] *Ordynacje i ustawy wiejskie z archiwów metropolitalnego i kapitulnego w Krakowie. 1451–1689*, ed. S. Kuraś, Kraków 1960, no. 99.

[195] *Ustawa dla Pawłowa czyli Merecza pod Wilnem* [in:] *Polskie ustawy wiejskie XV–XVIII w.*, pp. 416, 419.

[196] *Materyały do dziejów robocizny…*, no. 77 (1561), no. 84 (1569), no. 85 (1569).

[197] J. Łosowski, *Dokumentacja w życiu chłopów…*, pp. 169–195, 206–212. See the law for Merecz near Vilnius protecting trees "suited […] for honey" (1769/1771) [in:] *Polskie ustawy wiejskie XV–XVIII w.*, p. 416.

[198] *Ibidem*, p. 142 (village law for the village of Mały Lubień from 1650); p. 360 (village law for a noble villages in Lubawa district from 1756); p. 378 (village law for the episcopal villages of the Bishopric of Chełmno from 1758).

[199] J. Pielas, *Podziały majątkowe szlachty koronnej w XVII wieku*, Kielce 2013, pp. 268–270; M. Nowak, J. Pielas, *Las jako dziedzictwo szlacheckie od XVI do połowy XIX w.* [in:] *Las w kulturze polskiej*, vol. 5, ed. W. Łysiak, Poznań 2007, pp. 79–80.

[200] P. Dąbkowski, *Bartnictwo w dawnej Polsce…*, pp. 9–14. This document regulated the rules for honey harvesting on estates divided among three sons after the death of their father, Jan of Pilcza (†1477). What is interesting, he eliminated the obligation to pay honey tributes on the territorial principle (arising from the Statute of Warta, which ordered the payment of honey tributes to the owner of the forest – see above), in favour of the personal principle (tributes paid to the honey hunter's domanial lord). See *ibidem*, p. 12.

[201] See J. Łosowski, *Dokumentacja w życiu chłopów…*, p. 179.

the laws in documents issued by owners only confirmed customs already in effect (e.g. regarding the amount of tributes). These were often issued as a result of petitions by honey hunters to their lord.

Normative acts of substantial size are usually called in the literature "digests" or "compilations" of honey hunting law. The best known is the Niszczycki digest (captainship of Przasnysz from the end of the 16th or beginning of the 17th century).[202] It was most likely compiled by the captain Krzysztof Niszczycki himself[203] at the request of honey hunters subject to him, based on local customary law. Much shorter, on the other hand, was the *Porządek prawa obelnego* of the honey hunters of the village of Jedlnia (1661/1662), which contained only a few paragraphs. Its laconic nature makes it impossible to recognise the genesis of the act.[204]

The Niszczycki digest, as well as the Skrodzki digest, both based on local customary law, arose at the initiative of the community of honey hunters.[205] The importance of the first is testified to by having been printed twice (1659, 1730).[206]

The honey hunting law of 1614 for the captainship of Tuchola was addressed directly to honey hunters. It was written by royal secretary Jan Wielżyński.[207] In Labuda's opinion, at least some of the passages had their origins in the hypothetical Teutonic Knights legislation, the time at which it arose he established as in the 14th or 15th cen-

[202] The Niszczycki digest was published as part of the series *Biblioteka starożytna pisarzy polskich*, Warszawa 1844, pp. 217–271, by K.W. Wójcicki from a digest print from 1730, which was based on an unknown print from 1659. This is noted by S. Estreicher, *Bibliografia polska*, pt. III, vol. 12 (gen. coll. vol. 23), Kraków 1910, p. 161.

[203] Krzysztof Niszczycki, castellan of Raciąż (after 1606), voivode of Bełz (1615–†1617) was the captain of Ciechanów in the years 1580–1589 (in 1589 ceded for life to his son – Piotr Niszczycki) and 1600–1609, and the captain of Przasnysz from 1589 (*ius communicativum* with his wife, Katarzyna of Kutno; in 1589 this was separated from the captainship of Ciechanów) until 1616. In the literature, the date of origin for the digest is accepted as 1559. H. Kotarski, the author of Niszczycki's biographical sketch in the PSB, did mention that, bearing Niszczycki's biography in mind, this digest could not have been made that early. The problem was later addressed by L. Karłowicz (*Kiedy powstało prawo bartnicze Krzysztofa Niszczyckiego*, "Pszczelarstwo" 1986, no. 6, pp. 21–22; also available online on the journal webpage: http://www.miesiecznik-pszczelarstwo.pl). It seems appropriate to accept the hypothesis that the digest arose near the end of the 16th century or at the beginning of the 17thcentury. Incorrect dating was probably the effect of a mistaken reading and may refer to the first print of the digest (1659) (cf. however Niszczycki, p. 244). Without doubt, the question of dating the Niszczycki digest and its influence on the Skrodzki digest deserves its own study. See H. Kotarski, *Niszczycki Krzysztof h. Prawdzic (ok. 1540–1617)*, PSB, vol. 23, pp. 135–136; K. Chłapowski, *Starostowie w Wielkopolsce, na Kujawach i Mazowszu 1565–1696*, pp. 63, 85; *idem*, *Starostowie niegrodowi w Koronie...*, pp. 292, 351; *Urzędnicy województwa bełskiego i ziemi chełmskiej XIV–XVIII wieku. Spisy*, eds. H. Gmiterek, R. Szczygieł, Kórnik 1992, no. 385; S. Estreicher, *Bibliografia polska*, p. 161.

[204] A. Wójtowicz, *Obelść, obelnicy i prawo obelne*, pp. 20–21.

[205] Skrodzki, p. 7; Niszczycki, p. 221.

[206] S. Estreicher, *Bibliografia polska*, pt. III, vol. 12 (gen. coll. vol. 23), Kraków 1910, p. 161.

[207] For more on the genesis and characteristics of these sources, see G. Labuda, *Nieznany pomnik polskiego prawa bartnego…*, pp. 342–374; K. Górski, *Mało znany pomnik prawa bartnego……*, pp. 332–333; M. Kargul, *Bartnictwo na ziemi bytowskiej…*, pp. 57–71; *idem*, *Abyście w puszczach naszych…*, pp. 98–102, 130–133 (also the correction there of Labuda's findings regarding Jan Wielżyński).

tury[208] Thanks to his work[209] it is known that Tuchola laws were patterned after the law in force in the captainships of Świecie,[210] Człuchów[211] and also from Lębork and Bytów (in German: Lauenburg and Bütow) district.[212] Receiving an ordinance also were the honey hunters of Wałcz and of the captainship of Nowy Dwór (1750).[213]

The regulation of the rights and obligations of royal honey hunters was also possible through the domanial authority of the monarch. Sigismund III Vasa on 20 December 1630 in Tykocin granted two "privileges" to royal honey hunters from the captainship of Ostrołęka and Łomża (Nowogród honey hunters). The king thereby confirmed the rights of honey hunters (regarding the particular honey-hunting activities and their self-government), including the maximum amount of tributes to be paid to the captain.[214] These acts were later confirmed by Ladislaus IV Vasa (1637), John II Casimir Vasa (1660) and Michael I Korybut Wiśniowiecki (1673). Although the confirmation that the law was in effect did not constitute a source of law (*fons iuris oriundi*), in that it did not create any new norms, one may not ignore the personal regulation by the king of the situation of honey hunters subject to him.[215] Another example of an act issued by the king within his domanial authority was the ordinance for Biecz honey hunters of 1538.[216] This act, issued by Sigismund I after a petition from his subjects, contained penal provisions (including the death penalty for the theft of bees, destruction of hives, trees, or honey tree markings), specified the rights of honey hunters (including the one to establish hives on royal lands) and estate owners, as well as the obligation that the captain confirm the alienation of hives. The ordinance was in force both for royal and noble subjects who used the hives located in the forests of the captainship of Biecz. Józef Półćwiartek indicated in his work, the privilege of Ladislaus IV of 1635 for the honey hunters of Leżajsk laid down the principles of payment of honey tributes and of the use of the forest.[217]

In its findings, the royal referendaries' court could verify (or also change) the amount and character of tributes for subjects on royal estates. Insofar as decisions applied to honey hunter communities, their legislative character allows these to be regarded as honey hunting law *sensu stricto*.

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[208] G. Labuda, *Nieznany pomnik polskiego prawa bartnego…*, pp. 346, 349. This thesis was recently supported by M. Kargul (*Bartnictwo na ziemi bytowskiej…*), pp. 59–62. At the same time, he posed the (uncertain) hypothesis that the Tuchola digest (1614) may constitute a "simple reception" of Teutonic Knight articles, to which earlier articles regarding a forestry guard were added (*idem*, *Abyście w puszczach naszych…*, pp. 131–132, note 250).

[209] G. Labuda, *Nieznany pomnik polskiego prawa bartnego…*, pp. 342–352.

[210] *Ibidem*, pp. 364–368.

[211] *Ibidem*, pp. 346–349, 355–364 (text).

[212] K. Górski, *Mało znany pomnik prawa bartnego…*, pp. 334–345.

[213] AGAD MK 55, f. 192–193. Cited in J. Rafacz, *Biecka ordynacja bartna z r. 1538*, p. 28.

[214] A. Markowski, *O barciach i bartnikach…*, pp. 10–12; R. Żukowski, *Bartnictwo w Zagajnicy Łomżyńskiej…*, pp. 81–83. E. Wroczyńska mistakenly classifies this act as being applicable also for Podlachia (cf. *eadem*, *Eksploatacja lasów na Podlasiu…*, p. 157).

[215] Issues related to non-vocational honey hunters (in particular honey tributes) could be regulated through royal acts, too. See *Materyały do dziejów robocizny…*, no. 23 (1529), no. 39 (1540), no. 69 (1556), no. 83 (1569).

[216] This text was published in J. Rafacz, *Biecka ordynacja bartna z r. 1538*, pp. 32–34.

[217] J. Półćwiartek, *Położenie ludności wiejskiej starostwa leżajskiego…*, pp. 144–145.

There were also acts addressed to honey hunters in ecclesiastical domanial legislation. These are most frequently described as "privileges". The Bishop of Kraków, Marcin Szyszkowski, in 1629 established an annual gathering of honey hunters from the Kielce demesne. These honey hunters also received an ordinance in 1629, which was amended in 1668.[218] Other honey hunters on the Radłów episcopal demesne received privileges as well (1660).[219] In the following century, the Bishop of Kraków Kazimierz Łubieński issued a statute for the honey hunters on the Kielce and Cisów episcopal demesnes (1715),[220] and Bishop Konstanty Felicjan Szaniawski created a separate honey harvesting organisation on the Cisów estate.[221]

Honey hunting ordinances were also issued on noble estates. The guild of honey hunters in Wierzchowiska received one (1782).[222] On the Giemły (or Gemel) estate in Royal Prussia, a honey hunting law was in force, patterned on the Tuchola law discussed above.[223] Codes in effect in the 17th century on the Firlej family estates near Kock had the character of a honey hunting ordinance, too.[224]

An example of a law for unorganised honey hunters was the honey hunting law for the Jabłonna episcopal demesne (belonging to the Bishop of Płock) of 1639, which recorded penalties for, among other things, the theft of bees, destruction of trees or honey tree markings, as well as rules to be followed during swarming. As Hubert Wajs concluded, honey hunting organisations did not operate on these estates.[225] The use of honey tree markings on the property only indicated the regulation of the ownership of honey trees, which may have been a sign for the aspiration to all forms of an organised *communitas*.

The honey hunting community did not limit itself exclusively to passive acceptance of domanial legislation. It did occur that the community itself took the initiative, which might take the form of a petition (as discussed above) or passing a resolution independently. As a result, one may also identify such sources whereby the primal lawmaker was

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[218] S. Barański, *Dzieje bartnictwa w Puszczy Świętokrzyskiej…*, pp. 65–66 (text). Interestingly, in this same act, the bishop also included penal provisions protecting beehives, bees and honey, which referred to all subjects on the given estate. See also Archiwum Kapituły Krakowskiej 3, f. 289 (1629); *ibidem*, f. 599 (1668); Cited in J. Rafacz, *Biecka ordynacja bartna z r. 1538…*, p. 28.

[219] Privilege of Bishop Andrzej Trzebicki, Akta kanclerskie 30, f. 267–270; Cited in J. Rafacz, *Biecka ordynacja bartna z r. 1538*, p. 28. J. Muszyńska also referred to this privilege in *Gospodarka dworska w dobrach biskupów krakowskich w połowie XVII wieku*, Kielce 2012, p. 155.

[220] S. Barański, *Dzieje bartnictwa w Puszczy Świętokrzyskiej…*, pp. 66–68.

[221] *Ibidem*, p. 69.

[222] J. Mazurkiewicz, *Zabytek prawa bartnego w Wierzchowiskach…*, pp. 291–302. The author argues that domanial owners "probably summarised honey hunting customs that were known to them and the honey hunters relatively well from earlier transmission of the rules of honey hunting customary law" (*ibidem*, p. 292). Of course, one cannot ignore the presence in this act of norms of a customary origin (as in every similar example of domanial legislation). Nevertheless, I believe that one may regard honey hunting law of Wierzchowiska estate as an example of statutory honey hunting law, a type of statute for honey hunter community (see below).

[223] G. Labuda, *Nieznany pomnik polskiego prawa bartnego…*, pp. 342–352.

[224] A. Bocheński, *Beitrag zur Geschichte der gutsherrlich-bäuerlichen Verhältnisse in Polen auf Grund archivalischer Quellen der Herrschaft Kock*, Krakau 1895, pp. 133–134. The forestry law determined, among other things, the rules for honey harvesting, including the obligation to mark honey trees, the tributes of honey hunters, as well as the procedures to follow in the case of fallen honey trees. According to Bocheński, near the end of the 17th century the freedom of the honey hunters of Kock was limited significantly.

[225] H. Wajs, *Bartnicy z Jabłonny…*, pp. 70–71. Also mentioning Jabłonna law is J. Łosowski, *Dokumentacja w życiu chłopów…*, p. 179.

the *communitas* of honey hunters itself. This did not occur entirely autonomously, and these legislative acts did require at least the tacit acceptance of the domanial lord (namely, the absence of opposition), similar, for that matter, to resolutions of village communities (*gromadas*).[226] An example of a law enacted by a community and confirmed by the lord (in the case, the captain of Świecie) was the resolution of the honey hunters of Drzycim of 1734, in which they voluntarily decided to give 11 pounds of wax for the local church.[227] Also in the Niszczycki digest one can read that "it is an ancient law described in the Honey Acts, resolved by Honey Hunters, that Honey Hunters shall not hollow pines whatsoever […]".[228] Honey hunters' resolutions could also have a comprehensive character, regulating particular law as a whole. The best known was the resolution of the honey hunters of captainship of Łomża, which was recorded and submitted for approval of the captain by Stanisław Skrodzki, on account of whom the collection is known in the literature as the "Skrodzki digest".[229] As the author himself wrote, "these articles now recorded anew for them [i.e. "the honey hunting jurisdiction" – KG] have been approved by all Honey Hunters who love the truth", were submitted to the captain, with the request that the resolution be "approved, confirmed and signed by Your Lordship's hand".[230] The captain's approval in writing was very important for the honey hunters, as earlier (likely in November 1581 or 1582) "they tried to request that the Articles would be legally recorded with approbation by the Lord Captain [Andrzej Modliszewski[231] – KG]", which he in the end did not do.[232] One may not, however, draw from the earnest desire of the honey hunters for written confirmation a general conclusion that the law enacted by the community would not be valid without formal approbation. Written confirmation was above all to increase the efficacy of the law, so that "transgressions and disobedience of the law would not increase".[233]

One may note that all of the above norms (or collections of them) did not arise only in the area of the given definition of honey hunting law, but moreover were addressed to

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[226] See the above section devoted to customary law, as well as J. Rafacz, *Ustrój wsi samorządnej…*, pp. 220–223.

[227] *Dwa dokumenty dotyczące bartnictwa w starostwach tucholskiem i świeckiem*, ed. A. Mańkowski, *Zapiski Towarzystwa Naukowego w Toruniu* 1917, vol. 4, no. 1, pp. 47–48.

[228] Niszczycki, pp. 232–233.

[229] The Skrodzki digest was published by A.A. Kryński as part of the *Scriptores Rerum Polonicarum* (SRP) series, AKH, vol. 9, Kraków 1886, pp. 1–44.

[230] Skrodzki, p. 8.

[231] Andrzej Modliszewski was the captain of Łomża in the years 1581–†1604 or 1605. K. Chłapowski, *Starostowie w Wielkopolsce, na Kujawach i Mazowszu 1565–1696*, p. 73; *idem, Starostowie niegrodowi w Koronie…*, p. 356.

[232] This law was passed when "at the first Nowogród *rug* [transl. note: a court inquiry, ensuring that the honey hunting rules were being upheld. See A.A. Kryński, *Słownik wyrazów godnych uwagi, użytych w „Porządku Prawa Bartnego dla starostwa łomżyńskiego z r. 1616",* Kraków 1885, pp. 24–25.] Andrzej Modliszewski became the captain". Nowogród honey hunters' *rugs* fell on St. Elizabeth's Day (19 November) (Skrodzki, Art. 79, p. 32; *Chronologia polska*, ed. B. Włodarski, Warszawa 1957, p. 236), thus, honey hunting law was first recorded in the autumn of 1581 or 1582 (cf. Z. Gloger, *Bartne prawo*, p. 118, who dated this in 1583). Because Modliszewski did not give final confirmation to the law, the honey hunters undertook a new attempt, which likely ended in success in 1616, when Adam Kossobudzki endorsed the "newly […] recorded" Łomża honey hunting law (Skrodzki, p. 8).

[233] Skrodzki, p. 8.

and applied to specific communities of honey hunters. This makes it possible to refer to them as particular honey hunting law (honey hunting law *sensu stricto*).

It should be emphasised that it would be an oversimplification to classify normative acts constituting particular honey hunting law as belonging to the general category of village laws or statutes, as did Stanisław Płaza.[234] It is justified to distinguish alongside the latter a similar (yet distinct) collection containing acts which can be called "honey hunting ordinances". This distinction is to a large extent the result of the above separation of particular honey hunting law and rural law as parts of domanial law.

The distinguishing trait of honey hunting ordinances was above all that the norms were addressed to honey hunters or their communities. The addressee thus was a group of bondsmen on a given estate, distinguished by their vocation. As a rule, their scope included questions related to vocational honey harvesting: the tributes owed to the manor, the functioning of their organisations, punishment for behaviour that went against the welfare of the honey hunters, as well as civil legal relations.[235] The initiative in the issuance of this kind of acts would come either from a group of honey hunters or from their domanial lord; the honey hunter community itself could participate in the preparation of the text of the document. These acts constituted a source of statutory law, although some passages might reflect customs or norms of customary law that were in force in a given area. A particular type of honey hunting ordinance was the digest of honey hunting law. It was distinguished by its scope, surely also to a significant degree it was based on the particular customary law in force (such as e.g. the Niszczycki digest or Tuchola law). Of a character analogous to ordinances was the law enacted by the honey hunter communities themselves. The necessity for at least the tacit acceptance of such laws by the domanial lord means that, although they are genetically different, formally they did not differ significantly from law enacted directly by the owner. Confirmation, however, (as in the case of the Skrodzki digest) had a positive effect on the enforceability of the law.

Honey hunting ordinances (including digests of honey hunting law) were thus acts of domanial legislation similar to village laws or statutes, addressed to a group of vocational honey hunters that were distinct from the village community (*gromada*).

It should be emphasised that like customary law, such statutory particular honey hunting law did not require the approval of the public authorities. This area, like domanial legislation as a whole, remained entirely under the power of the landowner.

2.3.3. Summary

Norms belonging to honey hunting law were enacted by practically all law-making bodies known in pre-1795 Poland: the king, the Sejm, local assemblies (*sejmiks*), landlords, and honey hunter communities themselves. Much as in the case of customary law, only norms that were directly addressed to specific honey hunter communities belonged to particular law (honey hunting law *sensu stricto*). This was above all law enacted for

[234] S. Płaza, *Historia prawa w Polsce…*, pt. 1, pp. 122, 158–159; *idem*, Źródła drukowane do dziejów wsi…, pp. 127–133.

[235] For more, see K. Górski, *Prawo bartne w Polsce w XVI–XVIII wieku…*, pp. 121–124.

subject honey hunters by domanial lords: nobles, clergy, the monarch or captains acting in his name.

The remaining norms cannot be classified as honey hunting law *sensu stricto*. Domanial law, although it *per se* constituted *ius particulare*, it also contained norms which only indirectly applied to honey hunters, and so this was not particular honey hunting law (*sensu stricto*), much like royal privileges, which were directed toward landowners and affected the subject honey hunters indirectly. On the other hand, a source belonging to common law (privileges and royal statutes, Sejm legislation) were not addressed to specific communities, were general in character and in effect could affect honey harvesting relations only indirectly.

3. Results

Norms, which according to the above definition may be classified as honey hunting law, were present in both customary and statutory law. The catalogue of such regulations was quite broad and diverse. It included both Polish 13th-century customary law as well as 18th century domanial law, Sejm constitutions for all of the Kingdom, and provisions for small villages and honey hunter communities. How can one systematise such a heterogeneous assemblage?

An answer to that question was offered by Karol Buczek. He advanced the thesis that the prevalence of honey hunting in the Middle Ages resulted in the appearance of nearly universal (customary and statutory) norms associated with e.g. the ownership and use of beehives (and surely penalties for damages to them as well).[236] One might add that this did not only apply to common law. Similar isolated regulations also appear e.g. in the sources of Polish municipal law,[237] Kulm law,[238] and the Statute for the Armenians.[239] This was surely an effect of the presence of "honey hunting" norms in the original sources of these systems: German law or the Armenian *Datastanagirk*. Thus, in many collections of norms (in customary law or royal statutes) there appear regulations that were still necessary on a general level. The more developed the honey harvesting

[236] K. Buczek, *Książęca ludność służebna…*, p. 84. As an example of such norms, K. Buczek gave the above-mentioned norms of the ancient Polish customary law (The Book of Elbląg) as well as the Statute of Warsaw of Duke Janusz I (1401).

[237] In light of the glossary found in the work of Paweł Szczerbic, on account of the "wildness" of bees, it was not possible to follow a swarm of bees to a different location nor to assert ownership after they had swarmed. On the other hand, theft of a swarm from a skep, wild beehive or apiary was punishable by a so-called "robber's death", that is, by hanging. P. Szczerbic, *Ius municipale, to jest prawo miejskie majdeburskie, nowo z łacińskiego i z niemieckiego na polski język z pilnością i wiernie przełożone*, ed. G.M. Kowalski, Kraków 2011, pp. 259–261 (Art. CXXI with glossary). See also M. Jaskier, *Juris provincialis quod Speculum Saxonum vulgo nuncupatur, libri tres*, Samosci 1602, p. 271 (lib. II, Art. 48); *idem*, *Juris municipalis Maydeburgensis liber vulgo Weichbild nuncupatus*, Samosci 1602, pp. 704–705 (Art. 121 with glossary).

[238] Z. Rymaszewski, *Nieznany spis prawa chełmińskiego z przełomu XIV–XV w.*, Łódź 1993, pp. 228–229 (II 38: *De furto apium aut mellis nocturno tempore*; II 41: *De furtu apium aut mellis*).

[239] The Statute for the Armenians of Sigismund I contained provision about the responsibility for swarms of bees sold. O. Balzer, *Statut ormiański w zatwierdzeniu Zygmunta I. z r. 1519*, "Studya nad Historyą Prawa Polskiego", Lwów 1909, vol. 4, pt. 2, p. 80.

economy became, the more detailed the laws were, which is shown by the example of the Masovian Statute of 1401. This of course did not exclude the existence of particular laws where it was needed on account of the particularly strong honey economy (e.g. in primeval forests), which as a rule was associated with the appearance of the first forms of honey hunter organisations. Decline of the range and prevalence of honey hunting made the general regulations superfluous.[240] Particular laws were sufficient, whether they were based on ancient customs or whether they arose with the participation of the honey hunters' domanial lord. The acts in the Grand Duchy of Lithuania (the Statutes of Lithuania and other economic laws), which were broader than the regulations in Polish law, only demonstrate the significant role played by grand ducal forests.[241]

The norms of non-particular law (e.g. Polish common law that could be found in royal statutes or Sejm constitutions) could regulate the status of honey hunters, and so these cannot be rejected when researching honey hunting relations. However, these must be clearly differentiated from honey hunting law *sensu stricto*. The latter was associated with the functioning of "empowered" honey hunting communities and constituted their particular law and determined their autonomy. At the same time, every such law proceeded from the body of local domanial law, regardless of whether it was on a royal (or grand ducal), ecclesiastical, or noble estate.

A fundamental problem that arose at this point was the differentiation of "particular honey hunting law" from the remaining "products" of the legislative activity of the domanial lord, who after all produced norms for "ordinary" bondsmen as well. Given that the legislative techniques of the time were burdened by a lack of precision, this problem could not always be resolved. Nevertheless, as the criterion distinguishing domanial "honey hunting law" from the rest of rural legislation, the addressee has been adopted. If a lord's act was directed *expressis verbis* or *implicite* to a honey hunting community subject to him, then such laws may be counted as particular honey hunting law (i.e. *sensu stricto*). This especially applies to acts which were issued at the request of the community, as well as the effects of the honey hunting communities themselves. Such honey hunting laws could of course be included in regulations of a general character, as long as they were addressed directly to the community. If, however, a law referred to bondsmen generally, it was an "ordinary" village law, even if the subject of the regulation was related matters, e.g. the protection of honey trees.

Systemisation of the question of how to divide these two groups of norms (non-particular and particular) may be done in two ways: by eliminating "universal" (i.e. non-particular) norms and giving the name honey hunting law only to laws particular to honey hunters, or also by classifying all norms to the "collection" of "honey hunting law" while simultaneously dividing them into norms *sensu stricto* (referring strictly to communities as their *ius particulare*) and norms *sensu largo* (also including regulations of honey hunter relations at a level higher than that of the community). The second option appears to be more justified, as it does not exclude numerous sources of law which

[240] E.g. in the *Zbiór praw sądowych* ("Digest of Court Laws") by Andrzej Zamoyski (1778) there are no longer provisions concerning honey harvesting.

[241] This phenomenon was previously pointed out in A. Żabko-Potopowicz, *Dzieje bartnictwa w Polsce…*, pp. 29–30.

are relevant to honey hunter relations. At the same time, it allows one to distinguish those norms which were strictly associated with their independence and autonomy.

In sum, one may count as honey hunting law *sensu stricto* (that is, honey hunting *ius particulare*) those laws that applied to specific honey hunter communities, either customary or statutory (enacted by the community itself, or directed toward them by the domanial lord).[242]

Honey hunting law *sensu largo*, side from the norms of particular honey hunting law, in the light of the concepts outlined above, also included:

- common law norms, either customary or statutory in the form of general privileges, statutes, Sejm constitutions, etc.;
- norms from other particular laws: some sources of Polish municipal law, Kulm law and the Statutes for the Armenians, privileges of immunity, local assemblies (*sejmiks*) legislation as well as domanial legislation not directed toward a specific community of honey hunters.

4. Conclusion

In summary, according to the definition presented at the beginning, honey hunting law was a "collection" of legal norms (customary and statutory) which regulated relations between honey hunters, as well as between honey hunters and their domanial lords or protected the rights of honey hunters (the subjective aspect). Honey hunting law fundamentally concerned questions regarding the keeping of bees (the objective aspect). All these legal norms constituted honey hunting law *sensu largo* – each of them, in a particular space, regulated honey hunting relations. The appearance of the first norms was

[242] K. Buczek argued that for the period he studied (the Middle Ages) other groups of ducal "men of service" (in Polish: *ludność służebna*; it is hard to find a suitable term in English – "men of service" were ducal subjects that were obliged to perform specific services or produce particular goods for their duke; see more in K. Modzelewski, *Organizacja gospodarcza państwa piastowskiego…*, pp. 152–165; *idem*, *Chłopi w monarchii wczesnopiastowskiej*, p. 99 ff) had similar laws (K. Buczek*, Książęca ludność służebna…*, p. 84). K. Modzelewski counted also honey hunters ("hive-makers") as "men of service" and argued (in essence similarly to Buczek) that "diverse peasant group laws were born with the diversification of their functions" (*ibidem*, p. 106). Both medievalists agree that "group laws" did not change the status of particular groups of "men of service" and in the period studied, "they concerned in fact only a type of duty […]. *Ius* and *officium* accompanied each other, one resulted from the other" (K. Modzelewski, *Organizacja gospodarcza państwa piastowskiego…*, p. 161; see also K. Buczek, *Książęca ludność służebna…*, p. 93). One may only resume that the seeds of Masovian honey hunter organisations known in the late Middle Ages (the 15th century) could be, in a certain sense, a continuation of groups of "men of service" of the Dukes of Masovia known earlier. Perhaps, the original "men of service" over time formed brotherhoods organised by honey hunters, which later were subject to the ducal captains. Buczek noted that "[Masovian – KG] honey hunters in the 16th and subsequent centuries still constituted something of a kind of ducal "men of service", whose laws were based necessarily on the old ones" (*ibidem*, p. 85). In order to support Buczek's supposition, it should be pointed out that analogously to those of honey hunters, shepherds also had "vocational" self-government courts (and perhaps also customary law) in some regions in the modern era (B. Baranowski, *Wyrok sądu owczarskiego…*, pp. 538–545; Z. Kolankowski, *Sąd owczarski ma Mazowszu płockim w końcu XVIII wieku*, "Lud" 1954, pt. 1, pp. 546–551; A.H. Kaletka, *Zapiski do dziejów sądownictwa owczarskiego*, "Lud" 1954, pt. 1, pp. 552–554).

linked with the necessity of regulating important questions related to honey harvesting, which in the Middle Ages was a fairly widespread occupation. Thus, one can find provisions of honey hunting law in Polish ancient customary law, as well as in the first statutes. Norms concerning honey hunting functioned also outside of common law e.g. as domanial *ius particulare*, especially when local honey hunting was quite intensive. With the coming of the modern era, the importance of honey hunting declined, and general regulation ceased to be necessary. They remained in places where the honey economy proved resilient: in the forests of the Grand Duchy of Lithuania, in northern Masovia and in Royal Prussia. Thus, in the Statutes of Lithuania one can find a range of honey hunting provisions, and Masovia and Prussia abounded in normative acts issued by domanial lords.

Some of the honey hunting legal norms were associated with specific estates, and even with particular honey hunter communities. These norms ordinarily constituted the basis for self-governance organised in the community of honey hunters and were their *ius particulare*. For the purposes of this work, these have been described as honey hunting law *sensu stricto*. They entered into the body of domanial law, much as rural law did. Their validity depended on the consent of the landowner, but this did not have to be expressed in a formal manner. The addressee differentiated these from other norms in effect on a given estate, as they were addressed to the honey hunter community, and so to a group of bondsmen who were different in terms of the profession they practiced, as a rule with the status of a legal entity. The object of regulation was questions related to forest beekeeping.

It seems that the concept introduced for the purpose of this work of honey hunting law *sensu largo* as well as that of particular honey hunting law (*sensu stricto*) belonging to domanial law may assist future researchers in conducting more clear and effective analysis of honey hunting law, not only in terms of the its institutions, but also of its place in the system of the sources of law in pre-1795 Poland.

Incidentally to the discussion, one might still note that both village communities and honey hunter communities exhibited similar forms of organisation (*communitates*) with a personal character.[243] One may thus call them corporations. They functioned in a permanent location, although their territorial structure might be modified (by the domanial lord). The essence of the community however was the personal substratum: its members. The degree of "empowerment" of these communities depended on the ability of their members to organise themselves. One can see that particularly in honey hunter communities, which were distinctive for their high independence and even autonomy vis à vis their domanial lords. As discussed above, this was an effect, among other things, of the peculiarities of the vocation. Both village communities and honey hunter communities were entities that could initiate the recording of their customs or even establish a new law. Both communities were however subject to the domanial lord, the effect of which was subjugation to the owner of their estate (on royal estates also the king, who was

[243] This was pointed out, among others, by A. Braun (*Z dziejów bartnictwa w Polsce…*, p. 1). Tymieniecki saw an analogy between brotherhoods (*fraternitates*) of honey hunters and cities (as corporations) (*idem*, *Sądownictwo w sprawach kmiecych…*, pp. 79, 82–84). A different approach to this question was taken by Zbigniew Ćwiek, who denied honey hunters even the quality of a "social topic" (*idem*, *Z dziejów wsi koronnej…*, p. 128).

represented by the captain administering the estate). The domanial lord had the right to verify customary law as well as to create law, but the power to enforce these rights in practice depended on the strength of the village community or the honey hunter community.

In pre-1795 Poland, one can find many examples of plebeian (i.e. non-noble) corporations, and thus communities which were not part of the nobility and were frequently dependent on an estate owner (nobles, clergy, the monarch). Such corporations had varying degrees of independence and autonomy, which depended on their owner, but also on the character of the corporation (village community, honey hunting community, town). This phenomenon seems to offer an interesting field for research, also (and perhaps most of all) for legal historians.

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